

COUNCIL MEETING

MARCH 8, 2017

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, March 8, 2017 at 8:32 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun (*present at 8:45 a.m.*)
Honorable Mason K. Chock
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable Derek S.K. Kawakami
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

Council Chair Rapozo: Councilmember Brun is running late. He had to make a stop, so he should be here in about fifteen (15) minutes or so. May I get a motion to approve the agenda, please?

APPROVAL OF AGENDA.

Councilmember Kagawa moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the agenda as circulated was then put, and carried by a vote of 6:0:1 (*Councilmember Brun was excused*).

MINUTES of the following meetings of the Council:

December 14, 2016 Council Meeting
February 8, 2017 Council Meeting

Councilmember Kagawa moved to approve the Minutes as circulated, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the Minutes as circulated was then put, and carried by a vote of 6:0:1 (*Councilmember Brun was excused*).

Council Chair Rapozo: Thank you. Can we go to the Consent Calendar, please?

CONSENT CALENDAR:

C 2017-60 Communication (01/23/2017) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Craig A. De Costa to the Board of Review – Term ending 12/31/2019.

C 2017-61 Communication (01/31/2017) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Wade L. Lord to the Planning Commission (Business) – Term ending 12/31/2019.

C 2017-62 Communication (02/08/2017) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Susan H. Burriss to the Board of Ethics – Term ending 12/31/2019.

C 2017-63 Communication (02/17/2017) from Councilmember Kaneshiro, providing written disclosure of a possible conflict of interest and recusal regarding C 2017-58, Dedication Deed (Lot 1-A-5-A) from Grove Farm Company, Inc., to the County of Kaua'i for healing and treatment services, located at Hanamā'ulu, Līhu'e, Kaua'i, Hawai'i, Tax Map Key (TMK) No. (4) 3-8-002:001 (por.), as he is a Project Manager employed by Grove Farm Company, Inc.

C 2017-64 Communication (02/24/2017) from Councilmember Yukimura, transmitting for Council consideration, a Resolution Urging The United States Postal Service To Continue Postal Services At The Līhu'e Post Office Located On Rice Street, Līhu'e, Kaua'i.

Councilmember Kagawa moved to receive C 2017-60, C 2017-61, C 2017-62, C 2017-63, and C 2017-64 for the record, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2017-60, C 2017-61, C 2017-62, C 2017-63, and C 2017-64 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember Brun was excused*).

Council Chair Rapozo: Thank you. Next item, please.

LEGAL DOCUMENTS:

C 2017-50 Communication (01/17/2017) from the Mayor, recommending Council approval of a Grant of Pedestrian Access and Parking Easements from CIRI Land Development Company, conveying easements to the County of Kaua'i: Easements AU-1, AU-2, AU-5, AU-6, and A-1 at Weliweli, Kōloa, Kaua'i, Hawai'i, Tax Map Key (TMK) No. (4) 2-8-021:041, 044-068.

- Grant of Pedestrian Access and Parking Easements

Councilmember Kagawa moved to approve C 2017-50, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: I believe the Administration is coming up to do a presentation. I will suspend the rules with no objection.

There being no objections, the rules were suspended.

MICHAEL A. DAHILIG, Planning Director: Thank you, Mr. Chair. Mike Dahilig, for the record. We have transmitted to the Council the document that is before you via the County Attorney's Office. They reviewed it for legal form and legality. It stems out of a Condition No. 4, passed by the Planning Commission, relating to Special Management Area (SMA) Permit (U)2015-1 that relates to a triggerable SMA action, where the landowner, the CIRI Land Development Company from Alaska, had requested a consolidation of over twenty (20) lots down to ten (10) through the process of the SMA Permit. There were a lot of public concerns raised about an informal access that was used down to the lighthouse, as well as fishing needs, and all the way down to around the point towards the Grand Hyatt Kaua'i Resort and Spa (Grand Hyatt Kaua'i) side. So this action is meant to formalize a Grant of Pedestrian Easement, along with parking, to formalize and maintain that access as it continues to ensure that the public still has access. What has also arisen out of this particular request is that the access functions essentially as a rock wall across the ten (10) residential lots that were created by the Planning Commission. What is pending right now is a final subdivision approval; that is why on your agenda it is listed as a number of Tax Map Keys (TMKs) versus the lots that are being shown because final subdivision has not been granted at this point. This action is meant to help formalize the documents before final subdivision is actually granted.

Council Chair Rapozo: So the TMKs listed on the documents and the posting are the TMKs as it sits today?

Mr. Dahilig: As it sits today.

Council Chair Rapozo: Pre-subdivision?

Mr. Dahilig: Yes.

Council Chair Rapozo: Okay. Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. We have a map before us, but the public does not know probably what area we are talking about or what lots we are talking about, so can you explain it on the overhead?

Mr. Dahilig: Sure.

Councilmember Kagawa: Can you explain what lots are the landowners and where the parking easement and pedestrian access is?

Council Chair Rapozo: I know I saw some Google Maps in an actual overhead or...I do not know what it is called...a satellite? You might be able to have that available, too, because if you are the public and do not know what we are talking about, it is very difficult to determine when looking at this map. I think the map is great to discuss the easement. After that discussion, I would ask that we put up...it is up already...okay. Thank you.

Mr. Dahilig: We will start with the aerial. This is Pe'e Road. The Point at Po'ipū is in this location. The Castle at Makahuena is in this location. This is east and this is west. What traditionally has happened, because this was the sight of a former coastguard lighthouse, this land was surplus land that was deemed by the federal government as receivable via the settlements with the Alaska Native Corporations. The Cook Islands tribe had got this land through federal surplus designation and had held on to this property, pretty much since the '90s. During that time, you will notice and you will see here kind of a faint brown line, and that faint brown line indicates the kind of informal access that the public has used to both access the shoreline, as well as traverse laterally along the shoreline to get down towards the Grand Hyatt Kaua'i side of the beach. So there is a path, and you can see that right there, that already exists in front of the hotel that leads all the way down to the Grand Hyatt Kaua'i, which I am sure many of you may be familiar with that. What the intention of this is to actually create a parking lot right here where there are stalls that are going to be dedicated to the County, as well as an easement that runs along the ten (10) lots that will create the connector from this point at Pe'e Road, all the way around the point. The development standards that are being required is that anything *makai* of that path

is...nothing is to be constructed *makai* of that path, based on the covenants that we have put into the documents with the Planning Commission and everything is meant to be constructed *mauka* of that path. The area is open-zoned, so being open-zoned, the decision by the Planning Commission, as I can surmise, was initially there were over twenty (20) lots that were about ten thousand (10,000) square feet and you may see it faintly in the documents that are in front of you and you will see that they look pretty much like squares. The squares are kind of rimmed this way and provided for potential density of up to over twenty (20) dwelling units. The Cook Islands tribe felt that it was responsible for them to have a discussion on what is appropriate place-type development in this area, so they decided to chop up the parcel instead and re-subdivide it, per the SMA permit, into ten (10) parcels, one (1) inland right here and nine (9) that go this way at about an acre a piece.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: Mike, you talked about no development *makai* of the road, so can you go with your pointer and show where that line is? Is that the dirt road or is it under that?

Mr. Dahilig: I guess the coastguard station is right here, so it would be anything this way. It is more precise on the subdivision map that is in front of you, Vice Chair, but it would be this right here.

Councilmember Kagawa: What kinds of homes or commercial buildings are expected to be built on those lots?

Mr. Dahilig:

No commercial buildings.

Councilmember Kagawa:

Low commercial buildings?

Mr. Dahilig: Single-family dwelling units are what are proposed and allowed based on the zoning in that area.

Councilmember Kagawa:

So it is either or?

Mr. Dahilig:

It is just single-family.

Councilmember Kagawa:

I thought you said "low commercial."

Mr. Dahilig:

"No commercial."

Councilmember Kagawa:

Okay. Thank you.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: Thank you, Chair. Thank you, Mike. I appreciate it. Outside of the parking lot improvements, are there other additional improvements to the pathway or the easement that is in discussion? Also, who will be responsible for the maintenance of that?

Mr. Dahilig: Based on what improvements they are required to put in, they are required to put in all necessary infrastructure along the spine road. So this road Lot A is what is required for them to be put in, as well as the water infrastructure and whatever ancillary infrastructure that is required to maintain that road. In terms of maintenance of the path, I believe it rests with the landowner based on what the landowner is (inaudible).

Councilmember Chock: Okay, so there is no improvement, in terms of the easement itself, but the current condition of it will be maintained by the owner?

Mr. Dahilig: The only additional infrastructure item that will be put in is along the *mauka* side of the path, the *mauka* side of the path will have a low height rock wall to delineate the path. That will indicate where the pedestrian easement is going versus something that is informal.

Councilmember Chock: Okay. Thank you.

Council Chair Rapozo: So the path itself will not be improved?

Mr. Dahilig: My understanding is that it is meant to be natural in form, based off on what...the discussions were before the Public Access, Open Space & Natural Resources Preservation Fund Commission (Open Space Commission) was that it was meant to be maintained in its state.

Council Chair Rapozo: What is the condition of that path right now?

Mr. Dahilig: It is a dirt path. Having gone out there about two (2) years ago—it is walkable...it is a downhill slope that rims around and it is a slight uphill walk towards the...

Council Chair Rapozo: So that gets dedicated to the County, in addition to the parking lot and the County absorbs the liability?

Mr. Dahilig: Technically, yes.

Council Chair Rapozo: I have not been down there, so I do not know what the path looks like. I am looking at that map and it does not look like a very safe path. I guess we can have that discussion. Councilmember Yukimura.

Councilmember Yukimura: Where in the agreement does it say that the grantor is responsible for maintenance?

Mr. Dahilig: It is page number 5, item number 6.

Councilmember Yukimura: Well, what it says is that the grantee shall have no responsibility, but it does not say who has the responsibility.

Mr. Dahilig: We are the grantee, so we maintain or repair any of the grantor improvements.

Councilmember Yukimura: I know. It says we do not have the responsibility, but it does not specify who has the responsibility.

Mr. Dahilig: My understanding is that what is happening is that they are putting together an association of sorts to collect fees or do that type of thing. I can probably defer that question to...

Councilmember Yukimura: Can we have our attorney come forth?

(Councilmember Brun was noted as present.)

Council Chair Rapozo: In item 2, General Easement Terms, Maintenance Obligation, it says, "Except as stated below, Grantee, at its sole cost and expense, shall construct, install, maintain, and repair..." I guess I am getting dual conflicting messages.

Mr. Dahilig: Sorry, Chair, which page?

Council Chair Rapozo: Page number 3, Easement Terms, the first section. It is Section II (A.). It says, "Except as stated below..." but I am not sure...

Mr. Dahilig: I guess I would defer that item.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I have a general question. So this document or request has been vetted by the Planning Commission, right?

Mr. Dahilig: This is actually meant to fulfill a condition of a Planning Commission condition.

Councilmember Kagawa: Okay. In recent months, has the community brought any concerns? I am talking about the local community that is our

Kōloa-Po'ipū “watchdogs,” like Sam Lee and Tessie Kinnaman? Have they raised any concerns that perhaps there are some alterations that may be better suited?

Mr. Dahilig: We did take the route of the easement to the Open Space Commission so that they would have more eyes on the matter. We did have concerns about the path on whether it would actually be a road that goes all the way down to the lighthouse point versus something that was just traversable by pedestrian access. There was concern regarding overutilization of the easement if people were going to be able to drive all the way down to the point versus not. That is why the recommendation, in terms of the form of the path, was meant to remain as a natural path versus something that would facilitate overutilization down at the point. That is why the parking is up *mauka*. You have to walk down versus something that people can park at the end of the road.

Councilmember Kagawa: At the time of the Planning Commission approval, the community had raised those concerns and that is why the Planning Commission came up with this plan. Is that what happened?

Mr. Dahilig: All the Planning Commission mandated was that the pedestrian access was maintained as it was customarily used at this point. The form was actually worked on by the Department, the Open Space Commission, in conjunction with the Office of the County Attorney and the landowner. This form was actually what transpired after those discussions subsequent to the Planning Commission's condition.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Let me ask a really, really silly legal question. The land is owned by Aqua Puhi, LLC.

Mr. Dahilig: No, it is CIRI.

Council Chair Rapozo: Who is Aqua Puhi, LLC?

Councilmember Yukimura: That is another legal document.

Council Chair Rapozo: I am sorry. I am looking at the wrong one. Anyway, the grantor is CIRI?

Mr. Dahilig: Yes.

Council Chair Rapozo: The grantor is basically giving the County or dedicating the use of this property.

Mr. Dahilig: Right.

Council Chair Rapozo: You are saying that they are going to develop and maintain this parking lot and the easement.

Mr. Dahilig: Well, what the documents say is that the County is not responsible for the maintenance of it.

Council Chair Rapozo: Okay, so we can just let it overgrow?

Mr. Dahilig: That is a good question.

Council Chair Rapozo: I am assuming that the applicant or the developer is here. Maybe we can find out from them. That is going to have to be fixed at some point.

JENNIFER A. LIM, Carlsmith Ball, LLP: Good morning, Chair and Members of the Council. I am Jennifer Lim. I am an attorney and I represent CIRI Land Development Company.

Council Chair Rapozo: Thank you for being here, Jennifer.

Ms. Lim: Thank you for your questions.

Councilmember Yukimura: Could you speak a little louder?

Ms. Lim: Sure. If I may, I am just going to try and address your questions straight up. As a landowner, we will be maintaining the property and when CIRI sells the lots—right now, as Mike mentioned earlier, it is going through subdivision. I think Jenelle passed out a map showing how many lots exist there right now, all of those little, tiny lots. It is being consolidated and resubdivided into those ten (10) lots, and then these easements. Each of those lots are going to be encumbered by these easements, so that means that the lot owner, like lot owner number 7, is going to have this easement that is a burden on his property. The intent that CIRI has and what will be documented is that the homeowners association will be assigned the obligation to maintain those easement areas. I want to explain why in the document...I am just going to grab this copy back from Mauna Kea—you will notice that we are indicating in Section 2, which is on page number 3, where the grantor is not making any representations or warranties, that the County is getting this as-is, where-is, in a pretty much natural state, with the exception of the parking lot easement. That is important to us because we certainly do not want the County to be thinking that this is some wildly improved area. Right now, it is very unfinished. Through the subdivision process, the parking lot area will be asphalted. That parking lot is within Lot 9. The owner of Lot 9 and all of the other lot owners are going to have the homeowner's association maintain Lot 9. I do not think that maintenance should be a concern in

this case, but what the County will get is no obligation to do those maintenance activities in Lot 9 or throughout the easement area. On the *mauka/makai* easement and the lateral access easement, it is not going to be improved; what Mr. Dahilig said is perfectly correct. They are doing a little bit of clearing there. It is almost... again, going back to the Google Maps that you had up earlier, there is almost a path there right now and people have treated this as public property, although it has not been public property for a long time. It is almost delineated on the ground right now, but they are going to keep some measure of clearing there. The rock walls that Mr. Dahilig mentioned are actually not on the easement side, so the rock walls are on the private lot owner's side, and therefore, are the lot owner's obligations to maintain as well, but it just is intended to form a barrier. Did I address your question, Chair?

Council Chair Rapozo: You did. It makes it clearer for me, but it brings up a lot of concerns now, because the only assurance or the only obligation we have is not to take care of it, but yet we remain at risk. If someone gets hurt on that trail, it is not the landowner, it is us. I think for me, without it being spelled out in here, what enforceability we will have down the road? You could have a lot owner that says, "Screw the path. I am not even going to touch it." We have absolutely no recourse, zero. Right now, if someone gets hurt on the path, it is not our *kuleana*. The moment we approve this, it becomes our *kuleana*, and an unimproved path, then you have the whole Americans with Disabilities Act (ADA) question.

MAUNA KEA TRASK, County Attorney: For the record, Mauna Kea Trask, County Attorney. That is correct. In order to kind of illustrate this correctly, this agreement would be legal, but the policy call we are not to accept, the Chair is correct, is for this body to make according to its degree of comfort. What you would look at, like Ms. Lim said, paragraph 2, "Condition of the Easement Area," paragraph 3, "Grantors Improvements Within Easement Area," and paragraph 6, "Maintenance." If you look at paragraph 3, it says, "Grantor reserves the right, but shall have no duty, to construct, install, maintain, reconstruct, replace and repair any and all improvements, including but not limited to, parking facilities, pathways, pedestrian walkways..." The County would be indemnified, per the indemnity section, the landowners or anything that would happen, because it would be public access and public property, and like all of our public access easements, if there is some degree of negligence or something like that, that is why this agreement is before you today to make that policy call.

Council Chair Rapozo: Well, what it is going to require is this County is going to have to maintain that access at a safe level. We are going to have to. You cannot just say, "Okay, public go at it," and no one takes care of it. I think that would be a foolish call by this Council. Right now, that access is really illegal. It is not a legal access for the public, right? Are they required at any point to provide any kind of access to the beach? Right now, in Planning or in our code,

based on the size of this development, is there any requirement for them to provide some sort of public access?

Mr. Dahilig: What is required based off of this particular action is not something that triggers that section of the code, so this was meant purely as a SMA Permit condition that runs along the lines of the Coastal Zone Management Act, which emphasizes maintenance of public access for the public. That is why the sequencing of the permits is why we are here today, because they have a preliminary subdivision. In order to get the subdivision approved, the SMA law comes into effect because there are more than four (4) lots. That is where the overlay in the Coastal Zone Management principles necessitates the need for the maintenance of the public path, not a subdivision condition.

Council Chair Rapozo: Okay. For some reason, maybe I was dreaming, but I kind of thought it was going to be improved access. I really did. I am kind of surprised to hear today that, "No, we are just going to leave it like that. It is kind of natural. It is not going to be our responsibility, it is going to be the homeowner," which we do not know who that will be. It will probably be an absentee homeowner. I do not know. These are big lots. Councilmember Kawakami.

Councilmember Kawakami: Thank you, Chair. I am an advocate for keeping certain areas wild, rugged, and free, and I do not really know the area, so I do not know what this path leads to, but I am taking a visit. The question might seem silly, but I know at the legislature, we brought it up time and time again, but would appropriate warning signage lessen the exposure to the County, as far as liabilities? That comes up time and time again where we see lawsuits that there were no signs and the people did not know. If we put up signs, does that lessen our exposure?

Mr. Dahilig: Let me make a comment first and the Office of the County Attorney can give the more formal response for the question. The dilemma that is always faced whenever we look at access before the Open Space Commission is the degree of improvement and the degree of ownership of the path. The more and more you provide improvements and the more and more you provide signage and the more and more you provide these types of things that formalize the path, it has shown in the past that there is more and more duty placed upon, let us say the County, to actually keep it in that state. That is the dilemma that the counties are in because they are not covered under the trails no-liability law that private landowners are currently covered.

Council Chair Rapozo: I am sorry, what did you just say? It is better to keep it in this state?

Mr. Dahilig: I think if liability is a concern, that is a discussion that maybe should be had with the Office of the County Attorney and what is the appropriate degree of infrastructure you want to put down, because the more and more you actually formalize and create a public facility, the more and more it actually creates more duty on the County.

Council Chair Rapozo: Okay. Sorry, Councilmember Kawakami—that just blew me away. You are telling me that if we keep it like that with overgrowth and whatever, that we are in better shape in regards to liability than if we had them build an “up to standard” path and require them to maintain it and we put signage? You are telling me that that scenario is better for us?

Mr. Dahilig: Again, I would leave the discussion up to the Office of the County Attorney to answer, but it...

Council Chair Rapozo: I am not a lawyer, but I cannot imagine that being the case.

Mr. Trask: Allow me to step on Mike’s toes a little bit. I will let the Planning Director advise on planning and let us let the Office of the County Attorney take the hit for the legal stuff. In order to answer Councilmember Kawakami’s question, this specific area, I can orient you and the public to Shipwreck’s Beach. You can enter at the far side and park by the greenbelt and walk down. On the west side of Shipwreck’s Beach, there is a parking lot by Po’ipū. You can go in and there is a little cul-de-sac and park right there. A lot of fishermen walk down. Right there, there is a trail that goes west, goes down, and then it comes up. If you follow that trail up until recently, it would end up in a vacant lot right up by Pe’e Road and that is where this thing is. So you would walk around it. It is limestone, red dirt, and kind of brushy. That is the place we are talking about. As far as the improvement or not improvement aspect of it, the Office has advised this body in Executive Session before about certain things and it really stems from that Lansdell case from the ‘90s, I believe, at Queen’s Bath, whether our parking lot was a park or not. It was not and when somebody got injured thereon at the Bath, which was on State property, the County got sued, and ultimately because of various things, one of the issues being the nature of the path, its natural state etcetera, the Supreme Court found the County not liable. But that is not necessarily a definitive issue.

Council Chair Rapozo: Mauna Kea, in the Lansdell case, the path is not a County easement.

Mr. Trask: There is a parking easement, so that is one issue.

Council Chair Rapozo: Yes, where they park.

Mr. Trask: Yes.

Council Chair Rapozo: That is fine, but the easement...

Mr. Trask: Going down, I think that was the State.

Council Chair Rapozo: Right, it is not a County easement. You are telling me that this is going to be a County trail.

Mr. Trask: The State was found not liable in their respect of that case. I am not going to make a call one way or the other. It is a policy call to make for this body, depended upon your comfort is what I am trying to say.

Council Chair Rapozo: Sorry, Councilmember Kawakami.

Councilmember Kawakami: Contrary to what I thought would happen, if we put warning signs, it opens us up for more liabilities. Is that what I am hearing? That was the question of whether or not putting up warning signs would lessen the exposure to the County's liability.

Mr. Trask: Warning is always...you either have a duty to keep in reasonable condition and protect against unreasonable risk of harm or you have a duty to warn. So we would have a duty to warn, but Mike is also right in that the more you do to an area, the more you increase your liability. It is a weighing of risk. So go ahead and warn. If you pave and if you improve...Chair is right...you may trigger ADA because it is public and there are all of these other issues to look at. Those are all each individual issues to look at.

Councilmember Kawakami: Just one last request. I do not believe it is germane, so I just want to put it on the record that we are going to be sending something over in writing, just for my own personal knowledge, the history of how the federal government can own land, and then the settlement with Native Alaskans put that up as part of the settlement when there are unresolved issues with Native Hawaiians in and of itself.

Mr. Trask: That is a great question.

Councilmember Kawakami: I do not think we can talk about it today.

Council Chair Rapozo: Yes, that would be great for another discussion.

Councilmember Kawakami: I would love to send it over in writing and just get something back.

Mr. Trask: We would be happy to answer. Also, Ms. Lim pointed this out to me, but if you look at the grantee's indemnification portion...

Council Chair Rapozo: Page?

Mr. Trask: Page number 6. So those are paragraphs number 8 and 9, respectfully, regarding Chapter 520 and County Code Section 9-2.9. So Chapter 520 is Recreational Use Protection Act. So if a private landowner opens up their land to people to go on top for recreational use, they are protected from liability, but there are always issues regarding that. That is what, for example, Grove Farm had at Kipū Falls for a long time. After all, even for that, you still can sue and you still have to fight to get it dismissed. The effectiveness of it is one thing. For Section 9-2.9, that is the public access ways for any subdivision, specifically Section D. It states, "The Planning Commission may require a subdivider to improve an access way in a subdivision, prior dedication to the County. Upon dedication of land for a public access way as required, and upon acceptance by the County," which will be yourselves, "...the County shall thereafter assume the costs of additional improvement for and maintenance of the access way and the subdivider shall accordingly be relieved from such costs." That is what it says and that is what is referenced to in the document.

Council Chair Rapozo: I do not have an issue with indemnifying the landowner. That is not my issue. I think that is standard. We do that with all easements. My concern is, is this body willing to accept an easement or trail that is not improved that could cause this County some liability going forward? That is all it is. Councilmember Yukimura.

Councilmember Yukimura: And for which there is no clarification about maintenance. This whole thing started by the Planning Director saying that the developer was going to take care of maintenance, and this agreement does not show that.

Mr. Trask: Under Section 3, they reserve that right, but again, they assume no duty.

Councilmember Yukimura: There is no requirement that they take care of maintenance. So if you were a landowner, would you? There is no requirement.

Ms. Lim: If I may, as a landowner, yes, you would because that is why you have a homeowner's association there to do the maintenance. Membership in that homeowner's association will be mandatory. If

you want to buy a lot and you want to get to build your house here, you have to be a member of this homeowner's association and pay the dues that are required, and those dues will go to whatever level of maintenance is needed.

Councilmember Yukimura: The maintenance of that trail?

Ms. Lim: Well, to the extent that there is a level of maintenance needed. I am not trying to be evasive, but...

Councilmember Yukimura: Who determines what the level of maintenance is required?

Ms. Lim: I think that will be a decision that will be made by the homeowner's association because it is right now entirely private property and the landowner would like to allow the public to traverse and come onto the property.

Councilmember Yukimura: We have required per the SMA condition that access be provided.

Ms. Lim: That is right.

Councilmember Yukimura: So we are here with an agreement that delineates the various responsibilities in the development and acquisition, if you will, of that access and the maintenance into the future. That is what we are asking about. I do not see anywhere where there is a requirement that the developer or ultimate landowner has to maintain and it will be so easy for them to say, "It is too expensive. We do not need a level of maintenance that costs that much. Why should we pay for it?" What if the County says, "That is totally inadequate for public access?" Then what?

Council Chair Rapozo: It is very clear in the agreement what the level of maintenance is. I am not talking about the parking lot.

Councilmember Yukimura: But the initial level is "at the time of the granting of easement."

Council Chair Rapozo: Right.

Councilmember Yukimura: I agree with you that...I am not sure that I feel comfortable accepting it on an "as-is" condition. That is one of the questions about this agreement on whether or not the County should require a higher level of initial condition.

Council Chair Rapozo: It says, "Grantor has not made or does not make any representation or warranty with respect to the condition of the easement areas and access easements, and grantee," right here, us seven (7) today, "...hereby accepts the easement areas and access easements in their as-is condition."

Councilmember Yukimura: Correct.

Council Chair Rapozo: "Grantee," us, "...acknowledge that portions of the easement areas are located in rough, rocky, and uneven terrain that may not be safe or practical for use by every member of the general public." So that is what we are agreeing to and when these homeowners come in, they are going to be obligated to maintain the portion in front of their house to this condition based on this agreement. In other words, that person who bought the lot in front of the area that is all rocky, what maintenance? What are they going to do? Polish the stones? I am not comfortable and rather than force us to make a decision today, I would say that we send this over to the committee. If you folks have some issues, let us work with the Planning Department and the Office of the County Attorney. Do not take this personal—I know you are representing the company, but these companies are going to come here and make some money. Let us not forget that. These are going to be ten (10), at least one (1) acre size lots, which it is going to be nice; on the beach, on the oceanfront. They are probably going to make some money. My position today, if I had to vote on this today, I am not supporting it. I would like to have some discussion on what we can ask them to provide to make that trail safer.

Councilmember Yukimura: Chair, I would like to finish my questioning.

Council Chair Rapozo: Go ahead.

Councilmember Yukimura: The requirement for access is a condition.

Mr. Dahilig: It is Condition No. 4 of an SMA Permit.

Councilmember Yukimura: Of an SMA Permit?

Mr. Dahilig: Yes.

Councilmember Yukimura: Can you provide the specific wording?

Mr. Dahilig: I can read on the record now or I can transmit in writing.

Councilmember Yukimura: Can you do both, please?

Mr. Dahilig: What?

Councilmember Yukimura: Can you do both? Can you read it into the record now?

Mr. Dahilig: Okay. Condition No. 4, SMA Permit (SMA(U)-2015-1) requires “the establishment of a public footpath or constructed path to allow pedestrian access along the *makai* side of the wall shall be explored at subdivision. As represented on the preliminary subdivision map, the public access, parking, and open space easement shall be identified on the final subdivision map and incorporated into the deed descriptions of the affected lots. Additionally, the applicant will be responsible for the preparation of the necessary documents and it shall be ready for execution upon final subdivision approval and the recordation of the final subdivision map.”

Councilmember Yukimura: Okay. So in preparing this document, we expect both the Office of the County Attorney and the Planning Department to assert the public interest, so I think we need a much clearer description of the condition of the access and we may want some level of development to make sure that it is safe. This agreement admits that it may not be safe. It says it could be construction—Mike, what is the wording?

Mr. Dahilig: Public footpath or constructed path.

Councilmember Yukimura: Or constructed path or it could be something in between. I think the level of maintenance required needs to be specified and who does it, so that it is clear to us what the obligations are and what we would be accepting or not accepting.

Mr. Dahilig: I understand. I think in response to that, I guess the question, if there is guidance from the Council concerning the form and character of the actual path that would be put in and constructed, it may be prudent to have a briefing from the Office of the County Attorney concerning the legal concerns that went into why the design of the path is the way it is being presented to the Council.

Councilmember Yukimura: That is fine. We should all do our due diligence.

Mr. Trask: If I could interject, I believe Ms. Lim wanted to say something on this for a little bit. So if we allow her, it might inform you.

Ms. Lim: Thank you. I just wanted to again point to the section of the code that Mr. Trask raised earlier because that does describe that when the requirement is for the subdivider to actually improve the path—I am going to stop there for a second—there is going to be some clearing of this path, but it is not going to be paved. That has never been the intention. There are lots of

reasons not to do that. That creates a liability and maintenance, whereas just improving, clearing the existing natural terrain is both, I think, more in keeping with what the public expects, more in keeping with the surrounding area, and ultimately safer for everyone. But going back, if I may, to that section of the code, if the subdivider is required to improve the access way, then when the County accepts for dedication, the County assumes the cost of additional improvements for and maintenance of the access way and the subdivider is relieved of those costs. So that is the costs shifting, right? I do some more level of improvement, but then the County takes on an obligation. This Grant of Easement does not flip that responsibility. This Grant of Easement says, "County for you and your public, please come on the property and continue to do what really people have been doing for at least the last couple of decades," and my client does not want to preclude that. At the same time, we are going to do just really very moderate improvements on the path.

Councilmember Yukimura: What if you cannot get your subdivision?

Ms. Lim: I am sorry?

Councilmember Yukimura: What if you cannot get your subdivision and cannot do it?

Ms. Lim: You mean if we could not satisfy the condition, and then we remained with the twenty-six (26) lots of record that we have right now?

Councilmember Yukimura: Yes.

Ms. Lim: My initial response to that is I do not imagine that the community or my client would like to develop twenty-six (26) plus lots in this area.

Councilmember Yukimura: So that is why it would be good for us to find an agreement for the public access path and how we are going to do that.

Mr. Trask: That is true. I just want to also note for the record that without necessarily advocating for the present state of it—because the Council does have an appropriate role in reviewing it, letting their *mana'o* be known, and taking it to the committee because that is all part of the process—but for your avocation, it did go through Planning and the Open Space Commission. This is what came out of it, if I may have a moment...

Council Chair Rapozo: Hang on, Councilmember Yukimura.

Mr. Trask: I am not saying that is right or not, but just to be clear, that is the process through which the public informs the Planning Department and informs the Office of the County Attorney of what they want. This was a result of two (2) processes. To just infer that the Planning Department somehow did this without the public knowledge, I do not think is necessarily one hundred percent (100%) accurate. If you would like to put it through a committee meeting, I think that would only benefit the public's opportunity to chime in. Maybe some people did not participate, but I want to be sure that I do not speak for the public and I do not try to. That is really the Department's, the Commission's, and this Council's opportunity to do.

Councilmember Yukimura: The Council is speaking right now. We are going through the process and the process requires an implementation of that SMA condition. The condition is saying to go and figure out this easement. You have this choice of a developed path or a not developed path or maybe something in between; maybe a trail with gravel, but we define the level of safety and maintenance requirements and we define who is responsible for doing it. This Council has had many public access agreements...

Councilmember Kagawa: Chair, point of order.

Councilmember Yukimura: Excuse me?

Councilmember Kagawa: She is not asking a question and this is just going on and on, and on and it is very irritating when a Councilmember does not follow the rules of asking questions during this period.

Council Chair Rapozo: Do you have a question?

Councilmember Yukimura: I do and I am explaining...

Councilmember Kagawa: You are having a discussion right now.

Councilmember Yukimura: I am sorry, Chair, because you were doing a lot of talking, too, and not questioning.

Councilmember Kagawa: He is not abusing the rule like you are. Please ask questions.

Council Chair Rapozo: We are taking a recess.

There being no objections, the meeting recessed at 9:17 a.m.

The meeting reconvened at 9:22 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. Councilmember Yukimura, you may proceed.

Councilmember Yukimura: Thank you. Where is Ms. Lim?

Council Chair Rapozo: Did the attorney leave?

Mr. Trask: Hold on, one second.

Council Chair Rapozo: It is my intention to refer this to the committee next week. Did she leave? Is she coming back? Did she have enough?

Mr. Trask: I am not sure. Here she is.

Council Chair Rapozo: I would suggest that for the rest of today, ask your questions of what you need to develop your questions for next week's committee meeting, and then we will proceed with the discussion. At the request of the Planning Director and the County Attorney, we will also schedule an Executive Session on this matter as well, so that we can have a briefing in Executive Session at next week's committee meeting. Councilmember Yukimura.

Councilmember Yukimura: Thank you, Mr. Chair. As I was saying when I was so rudely interrupted...

Council Chair Rapozo: Councilmember Yukimura, can you just stop with the comments and move forward? It does not help the situation.

Councilmember Yukimura: Chair, I have the floor.

Council Chair Rapozo: And I can take it away. Just proceed with your question.

Councilmember Yukimura: Thank you. We have many a time had to deal with agreements that were made at this point where the Council approved Grant of Easement, and because we did not take care of the details, we have had many problems, which is why I asked my question about who is going to maintain this. So would I like to know whether these lots can be condominiumized? Are they allowed more than one (1) unit?

Mr. Dahilig: At this juncture, no.

Councilmember Yukimura: What do you mean "at this juncture?"

Mr. Dahilig: At this juncture, no. If given the time to provide the analysis for the Council, I can, at the next meeting, explain why there is not any Additional Dwelling Units (ADUs) on the property at this point.

Councilmember Yukimura: That would be very good. Thank you. In your opening statement, Mike, you said that they had the obligation to maintain and it appears that the language does not require that. Was it the intention of the Planning Department that they do have the obligation to maintain?

Mr. Dahilig: I will say that our intention is to try to look at easements, whenever they are proposed for acceptance by the County, to be in a condition in a manner that requires as little maintenance obligation on the County as possible. So if reading the Condition No. 6, as a non-obligation on behalf of the County, is not strong enough in terms of language before the Council, versus me interpreting it as "pushing the maintenance burden onto somebody else," and we do not see that the language is strong enough, then I accept that analysis as being short of your expectations. If that is something that you wish to be more clearly articulated as an affirmative duty versus a non-duty, then we can certainly respond in kind.

Councilmember Yukimura: Thank you. That is why I referred to our past problems, because many of them have occurred because we have not specified who takes care of maintenance. In the development of this agreement, was there a consideration of the development of a trail and defining the standards for maintenance of that trail?

Mr. Dahilig: The discussion regarding the trail first came as a consequence of the public process for the SMA Permit and the desire to maintain the access. That is the synthesis and origin of where our analysis started. Based off of public comment, we got input in terms of how the trail should be aligned and in terms of what state? Again, I raised the example of "should there be a paved path that goes all the way down to the beach that allows for parking towards the ocean versus up *mauka* where it is currently proposed?" All of those questions were brought to our attention, either via the SMA Use Permit process that requires a public hearing, as well as outreach that went to members of the public and including the Open Space Commission. This is a culmination of our analysis on the form of the path, taking into consideration some of the legal duties that could be accompanying it with the type of form that would be proposed, and ultimately the Planning Commission's requirement that some type of access is maintained based off of the current customary practice that is currently...I guess the property that is currently being used as right now.

Councilmember Yukimura: If the trail is accepted as-is, are there any signs planned for?

Mr. Dahilig: I do not have the answer for that. I can find you an answer for that.

Councilmember Yukimura: If there are signs, or even if there are no signs, but there is a designated public access and additional parking, one could guess that that will increase, and as the population grows and as Po'ipū develops, there is likely to be more use of that trail. Correct?

Mr. Dahilig: I would not disagree with that statement.

Councilmember Yukimura: You would not disagree?

Mr. Dahilig: I would not disagree with that.

Councilmember Yukimura: Okay. So with more use, there is likely to be over time a deterioration of a trail, especially if it is a dirt trail. Correct?

Mr. Dahilig: I think that is a fair characterization.

Councilmember Yukimura: If the trail deteriorates to the extent of becoming more unpassable or more difficult to pass, then there would be an increase in County liability. Would there not?

Mr. Dahilig: Well, I would defer that question to the Office of the County Attorney, but I think we do understand your previous comments concerning the condition of the path, whether it makes sense to have it in natural state or improve it in certain areas, and whether or not there is an affirmative duty to have the landowner maintain the trail. I think those concerns, we would be, I guess, as indicated previously, would probably be best to have the opportunity to have further discussion on that and also brief the Council in Executive Session concerning your concern.

Council Chair Rapozo: Councilmember Yukimura, I am going to stop you because we have Councilmember Kagawa and Councilmember Kaneshiro who want to ask questions and you are asking questions that you already know the answer to.

Councilmember Yukimura: I do not know the answer to them and I have subsequent questions, but I do not object.

Council Chair Rapozo: You do not have to object. I am recognizing Councilmember Kagawa.

Councilmember Yukimura: That is fine, but I would like the right to ask questions after they are done.

Council Chair Rapozo: Go ahead, Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair. I am going to model how to ask a question. In referring this to the Planning Committee next week, does that pose any problem timewise for the Planning Department or CIRI?

Ms. Lim: If I may, and I have to confess...

Councilmember Kagawa: It would be two (2) weeks.

Ms. Lim: Right. That is what I have to do; I have to confess what would be the outcome of that timing wise. I am just a little ignorant on your process if it goes to the committee, and if I may, I want to tell you our tension point. It is not a sharp tension point, but our tension point is that we do need to cross this easement off of our list in order to get final subdivision approval and I think my client is maybe not unique, but somewhat different than most subdividers in that they are actually building the improvements to reach subdivision approval, versus bonding for the improvement, so it is actually all getting done...the improvements are getting done. That is an expensive proposition, but that is the way they want to go forward, so we do want to not do anything that will risk getting final subdivision approval in a timely fashion. With that long answer, if this were to get deferred to the committee, as you mentioned, what would be the expectation on when it may be back before this Council?

Councilmember Kagawa: Two (2) weeks. It is just a two-week delay, total.

Mr. Dahilig: The Planning Department has no objection to that.

Councilmember Kagawa: Is two (2) weeks going to kill the project?

Ms. Lim: Two (2) weeks would not kill the project.

Councilmember Kagawa: That is all we need. This may get approved as-is. It is just the comfort level that the Council is asking for. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: The trail in front of The Point at Po'ipū that people use, is that a County easement?

Mr. Dahilig: I would have to take a look at the documents.

Councilmember Kaneshiro: With all of this questioning, does it make sense for us to do an improved easement to an unimproved easement? People walk along that coast, then they walk past the Grand Hyatt Kaua'i, and then they walk up on the cliff all the way up to Māhā'ulepū, all unimproved—would it make sense for us to have to do an improved easement just on this section, and then people walk onto The Point at Po'ipū onto an easement that is unimproved? What is our liability? Do they just stop at that unimproved section and have signs?

Mr. Dahilig: I think from a policy call standpoint, as the Office of the County Attorney had mentioned, that is the tension before the Council to discuss. What is on the table is unimproved and whether the accompanying maintenance, duties, and liability match the comfort level of the Council versus something that is improved, and the accompanying duties and liabilities for that, I think that is the weighing analysis that at this point, our recommendation is to go with this form of path, but certainly, we will defer it to the Council's wisdom as to what exactly this should look like.

Councilmember Kaneshiro: Okay. Thanks.

Council Chair Rapozo: What happens if the Council does not accept the easement? There is a SMA condition requirement and what happens if the Council does not accept it in this form?

Mr. Dahilig: If there is no easement on the property and that does not persist, then we would consider a violation of the condition, so we would need to establish or come to some agreement on what this thing looks like and that is an acceptable form.

Councilmember Kaneshiro: Will this get to a point where they will just say, "We do not want to do the easement anymore?" With this easement, it kind of kills two (2) birds with one (1) stone. The developer is giving us an easement, a parking lot, compared to someone buying it, developing it, and then we have to come back in with Open Space money to purchase an easement or a parking lot. What direction are we heading? I do not want to get to a point where we are making it so difficult that we will just take this off the table, and then we will have to come back with Open Space money to perpetuate the right for people to walk along the coast.

Mr. Dahilig: I understand. From what, at least I can see from the discussion around the table with the Councilmembers, the direction is not that public access is not desired; it is the form of the public access. If no public access was desired by the Council, then we would go back to the Planning Commission and say, "Okay, we need to amend this condition to reflect the concerns of the Council." At this juncture, unless the Council wants to reach that conclusion and send that direction to the Planning Commission, my presumption is that the

discussion lies along the lines of is it improved or is it unimproved? If there is a direction on that, then we can move forward either way.

Councilmember Kaneshiro: As a follow-up, is the Council able to tell the developer, "You folks need to do a six-foot concrete trail along the thing as an easement," which I am pretty sure a developer would say, "I do not really want to do all of that." Where is our limit?

Mr. Dahilig: I will say that Condition No. 4 does say either public footpath or constructed path. As the guy that had to draft the proposed condition to the Planning Commission, at the time that we drafted this back in 2014, we understood there was the exact same tension that the Council is currently wrestling with right now because we were not given a clear direction from the public on what form of access is required, and that is why it was left as constructed or not constructed. Based off of further input, that is why we went with this conclusion, but ultimately because of what needs to be accepted before the Council, the Council does have a say in terms of what this thing looks like. If it was bounced back to us that a constructed footpath is what is required, we would then say, "Okay, the conditions require one or the other. We are hearing from the legislative branch they want it constructed. So let us talk about options here at this point as to what we can do here to meet the intention of the body."

Council Chair Rapozo: Did the Planning Commissioners do a site visit?

Mr. Dahilig: Not on this one.

Council Chair Rapozo: Not on this one?

Mr. Dahilig: Not on this one.

Council Chair Rapozo: Did the Planning Department do a site visit?

Mr. Dahilig: Yes, we did.

Council Chair Rapozo: Who went down?

Mr. Dahilig: I have been down there. I would have to check with my regulatory chief.

Council Chair Rapozo: When is the last time you went down there?

Mr. Dahilig: It would probably have been in 2014.

Council Chair Rapozo: So recently, no one has been down there to look at the condition of the trail?

Mr. Dahilig: Not in the past three (3) years.

Council Chair Rapozo: But it is still your recommendation that we accept this easement as-is?

Mr. Dahilig: As-is.

Council Chair Rapozo: Okay. Councilmember Kagawa.

Councilmember Kagawa: Do you have a caretaker there? What is the status of that parcel right now? Does the public park and go through the property and use the access?

Ms. Lim: Right now, the subdivision improvements are being constructed, so the public should not be going on the property right now because it is actually under construction.

Councilmember Kagawa: Is there another way or another access that people are traversing in front of the proposed easement?

Ms. Lim: I do not know for sure. Do you mean coming from The Point at Po'ipū side and coming onto the property?

Councilmember Kagawa: Yes.

Ms. Lim: I do not know if they have fenced that area during construction.

Councilmember Kagawa: I am just wondering because I think all of us around this table are wondering about what is going to be the impact to the local usage. In order to gage the impact, what is the current usage now is kind of my question and do we have a local caretaker there that knows approximately how many people use that path on a daily basis?

Mr. Trask: Let me try this answer. Before, when I used to take my kids there and walk the path, apparently, this was always federal land and prior to that, it got traded to this private landowner. It is the Alaska Native Corporation, but still private landowner. Before, I always thought it was just open space and nobody went on it. I would just walk on it. That is all I would do. It really does not go anywhere. If you look at that lot, there used to be a chained gate so you could not drive your truck on top. There were just two (2) posts and a chain. You could walk over that, and then you would just walk from there down or if you

were walking on the path, you could keep going from in front of the Point and just loop up. It does not really take you anywhere. It just takes you to the road because after that are the condos on the cliffs or like in those houses. Pe'e Road is super developed, right? This is just an empty lot area, but apparently, it is actually empty twenty-six (26) lots. For the context of this, the landowner actually came in and subdivided that down to ten (10). Before it was twenty-six (26) and now they are looking to go ten (10) and they agreed to keep the access easement. Although people practically walk that, I practically walked it, it was just another place to go and hike along the coast is really what it was, and apparently I was trespassing.

Ms. Lim: If I may, and you were not alone. We do know that the landowner was aware that people were using the property. When I did site visits, I saw people jogging on the property. We had a cultural impact assessment as part of the SMA Permit proceeding and that indicated that people came and particularly were interested in night fishing. It is property that the public has freely traversed and that is why that sort of almost naturally created dirt path area indicates where the public has traveled.

Mr. Trask: Also, just to touch on Councilmember Yukimura's previous question about the condition and the erosion—as you know, and Councilmember Kaneshiro knows this, that is all limestone and rock, so it is not like it is a dirt cliff that goes into the ocean. It is Po'ipū, so it is all rock and limestone. There is dirt on top of it, but even when you walk it, you have to make sure you do not trip on the rocks. I do not know the extent of the erosion and all of that. They have to look at that.

Ms. Lim: If I may follow-up on Mr. Trask's point, because I neglected to respond to that earlier, if you would look at the map that Jenelle passed out this morning, which has that March 3rd date on it, the one that shows the subdivision. This is ever so slightly different than the version that is in the Grant of Easement. We can talk about that later if you would like but, if you see where that easement A-1 is, that is the lateral access that goes along the shoreline, you see that it is quite setback from the ocean. The erosion rate there is 0.07. There is almost no erosion and the reason we know that is because we have had to do shoreline certifications. But nevertheless, the easement is quite set back, so I think that the chance of erosion occurring anywhere along that A-1 easement is extremely unlikely. It is really set back in an area where there is almost no erosion to begin with. Then the *mauka/makai* easement, I do not imagine you were concerned about erosion in terms of ocean erosion, but maybe just that people were walking along it, continually what would be the effect on the path.

Councilmember Yukimura: My question was about erosion by use, not erosion by the ocean.

Ms. Lim: Okay. Even that area is fairly well-used now, so the property has not deteriorated to a state where suddenly people could not be going along that path. I do not anticipate that there would be any substantial change.

Councilmember Yukimura: Thank you. In asking my questions, I am not advocating a constructed path or sidewalk, if you will. I am just trying to see whether the Administration, who is going to be responsible for maintenance...if it is not clearly defined, we will become responsible for maintenance just in terms of... what do they call that...risk-management? Have we thought about all of these things in terms of what kind of trail we are willing to accept? It could be graded, possibly, a gravel trail, or it could be as-is or something in between. I am just hoping that somebody, the County, who is now going to have a property interest in that trail and an obligation to manage and to mitigate risks, has thought about what is the best way to construct this agreement, because I think everybody agrees that the access is needed. That is why this agreement is before us. But have we addressed all of these terms, in thinking about all of those things that we are going to have to handle once we get the easement?

Mr. Trask: We can talk more about this at the committee meeting, and that is when you go...as far as resources and maintenance, the cheapest is to maintain it...to keep it in its natural condition, put a sign, and say, "Be Careful. This Is In Its Natural Condition. Proceed At Your Own Caution." Then we pay for the cost of the sign. If you put gravel, you have to grade and make sure you do that correctly. Then once you put gravel, you have to maintain it in a certain portion and you will likely issue warning. If you do more than that, then there is more. So improvement—I am glad you specified that, because improvement could mean a lot of things. The more you do, the more it costs to maintain and all of that stuff. That is an analysis.

Councilmember Yukimura: The other issue is if you leave it as-is, what will be the needs for maintenance? Is the Department of Public Works going to be the one who has to address it? You, County Attorney, will have to address the risk-management. So it is a matter of all of these planning and anticipated responsibilities that have to weigh-in as we write this agreement.

Mr. Trask: Right now, stewardship agreements are the greatest. You have some people, even from the north shore, that are looking to takeover trails. So you find a community group who is into public access and they can maintain if you have an agreement with them. Again, the cheapest is always just to put the warning sign, in effect, "Do No Use This Path Because We Make No Warranty To Its Safety."

Council Chair Rapozo: Until we get sued.

Mr. Trask: That is true. But then the duty to warn, we would satisfy, right?

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: My question is on the parking. Sorry if you answered it already, but the parking is going to be improved and how many parking stalls are going to be in the parking area?

Ms. Lim: The parking area will be improved. It is going to be asphalt. There will be seven (7) parking stalls, nine (9) feet by nineteen (19) feet. That is what is in the parking area.

Councilmember Kaneshiro: Okay. Thank you.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: I guess we are getting agreements and taking this over by the County, this easement. If we do not agree to take this over, would it be possible to mandate that the developer keeps this easement under their ownership and mandates them to keep the easement together? If you do not know this, you can bring it next week.

Mr. Dahilig: That is a pretty involved question. It seems simple and there is a reason why...I do not think there is a clear answer we can give you on that, but it is probably something that we need some time to respond back to.

Councilmember Brun: Okay.

Mr. Trask: Can you send that in writing also? It would depend on what you mean by that question because if you...it could go so far as a taking, depending on what that means. If we are going to tell them...you could have to buy it versus agreeing to give it to us, via public access easement.

Mr. Dahilig: That is why we probably would want to go through an analysis to that question and provide options because I do not think there is one clear answer at this point.

Councilmember Brun: Okay.

Ms. Lim: If I may, when I look through your County Code, Section 9-2.9, Subsection B(7), so this does not address whether the Council accepts anything for dedication; this is just a flat-out statement of public accesses required, pursuant to a subdivision, which is what is happening here. Mr. Dahilig

read the SMA condition, which then deferred it to subdivision; subdivision approval has the requirement that we provide some kind of public access. It says, "The County shall indemnify the landowner from injury to members of the public who are injured within the access way." So whether or not there is an acceptance in dedication, that indemnification obligation would remain with the County no matter what. We appreciate the concern about what is the level of improvement, but if it is not done pursuant to an agreement, the legal obligation sits with the County in any event.

Council Chair Rapozo: Or we could choose to not accept the easement. That is conditional if we accept the easement.

Ms. Lim: Chair, respectfully, I do not believe that the obligation to indemnify...

Council Chair Rapozo: We will get the legal answers next week from the County Attorney. Councilmember Yukimura.

Councilmember Yukimura: Regarding the parking facilities, I heard that the homeowners would maintain the parking facilities.

Ms. Lim: To be clear, all of the easement areas are going to be...in fact, I believe there is a provision in this document where the grantor expressly says that we reserve the right to assign our position to any homeowner's association.

Councilmember Yukimura: Correct.

Ms. Lim: The intent with that is that all of the easements will be sort of packaged as a bundle of easements that the homeowner's association will have rights, duties, and obligations on, which will involve maintenance. The homeowner's association will ensure the easements. They will do whatever the level of maintenance is that the homeowner's association believes is appropriate. These are people who are going to own these lots. I actually think that creates a scenario where they are perhaps more concerned about maintaining an attractive, decent area, both in the parking area, which is right at the entrance of this ten-lot project, and even throughout the easement area. To answer the question directly, yes, there will be maintenance undertaken by the homeowner's association.

Councilmember Yukimura: Okay, but that is only whatever you are obligated in this—Mike and Mauna Kea, can you listen to this, please? That is going to be what...you are saying that you will pass on the obligations to the homeowner's association, but if it is not an obligation of yours in the agreement, there is nothing to pass on. It says, "Grantor reserves the right, but shall have no

duty, to construct, install, maintain, repair, or replace any improvements, including but not limited to, parking facilities, pathways, pedestrian walkways, emergency vehicle access, utilities," etcetera. Right now, the agreement shows no obligation on the part of the developer, which she says will then go to the homeowner. If there is no obligation, then it will not be any obligation to the homeowner.

Mr. Trask: I think that is an excellent point. If we can have time to discuss it in the committee, then that would be the most productive.

Councilmember Yukimura: Hopefully, you will discuss it before the committee and come back to us with some wording.

Mr. Dahilig: As mentioned previously, we understand the course of your concern, as stated many times previously, that who is on first, and we will get you an answer.

Councilmember Yukimura: Thank you very much.

Council Chair Rapozo: How many members of the public participated in the discussion at the Planning Commission hearings?

Mr. Dahilig: I will look at the minutes of both that and the Open Space Commission and get that information.

Council Chair Rapozo: Was it a lot? Was it a few?

Mr. Dahilig: It was actually a large amount, but I think they were there for various concerns, not just related to the public access, but also...

Council Chair Rapozo: I am talking about the public access.

Mr. Dahilig: I would have to go look at the minutes specifically Chair and get that itemization for you.

Council Chair Rapozo: I guarantee you that after this airs, next week you will hear from a lot more people.

Mr. Dahilig: I expect so.

Council Chair Rapozo: That will have to be addressed. Any other questions? If not, thank you. Anybody in the audience wishing to testify?

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, we have one (1) registered speaker, Evan Price.

EVAN PRICE: Evan Price. I am a house manager of three (3) properties adjacent to the property in question, and the clients who come to the houses are thrilled to be coming to Kaua'i, obviously. Their main concerns or their main interest is to have a wild and wilderness experience as much as possible. In regards to the trail issue, the Grand Hyatt Kaua'i trail is an improved...would probably be considered an ADA approved trail, which is adjacent. There is the greenbelt trail that would be flat and level and essentially with the American with Disabilities Act access type of trail. This property is more wild and scenic, so when people go on loop walks, and they call them "power hikes," very elderly people would not be taking the trail. As someone representing the interest of guests who are coming to Po'ipū, trying to maintain access to the ocean in a non-urban setting, a minimally improved trail that has erosion control and some landscaping to keep whatever soil in place, even as it gets compacted—that would be, in my opinion, the best way of maintaining access through this area. I am sure that the adjacent homeowners do not want erosion that would allow the trail to deteriorate and run onto their lawns and things like that. It seems logical that the homeowner's association would be able to want aesthetically this trail to be natural, but also maintained in a way that would enhance the value of this expensive real estate. I do not want to speculate and make guesses, but I assume that the homeowner's associations in Po'ipū are quite active in maintaining the quality and value of adjacent areas, even if they are not legally required to spend money doing so. In my experience, they do take responsibility for things like that. A minimally improved trail with very tenacious packed blue dust stone, putting in areas, some minimal terracing...

Council Chair Rapozo:
else wishing to testify?

Mr. Price, I have to stop you there. Anyone

Mr. Price:

Thank you.

Council Chair Rapozo:

Mr. Hart.

BRUCE HART: For the record, Bruce Hart. Just about every question I had just about was asked. Nine (9) parking spaces are too few. No SMA Permit until these issues are settled. I am not against the development, but not until these issues are settled. Everyone that has been brought up, every single issue that has been brought up, I concur with like the safety and the parking. One issue that has not been brought up—I am not familiar with the area, but I am familiar with other developments like this over the forty (40) years that I have been here—where are the bathrooms? These people living in million dollar homes are not going to want people pooping on the trail. All of these issues have to be settled. Public access is a priority. I do not think that the contract or what they are presenting, as it has been presented today, is in favor of the public. Not at all. I agree with Councilmember Yukimura and Council Chair that it is too vague. If they intend to take care of the trail and maintain it in a safe manner, then why not

put it in writing? What is wrong with putting it in writing? As a member of the public, I want to see that future generations have access to this area of the beach. Again, I am not against the development, but I want the access, safety, and all of the health issues addressed for the public all the way into the future, as far as we can see. Thank you.

Council Chair Rapozo: Anyone else? Is that it? With that, we will call the meeting back to order. We are in discussion. Councilmember Chock.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Thank you, Chair. I am happy to receive this into my committee for discussion. My only request is that we do have the recommendations of getting more clarity and detail into the contract prepared beforehand so that we can have a productive discussion on what we can agree to, which would include a description of what I want, which is a non-improved trail. From my perspective, I think we do need to clarify the oversight and make sure that this does not fall into the hands of what we have seen previously, in terms of care of our trails in the past. Makahuena is actually a very significant place, in relation to Kāneʻaukai Heiau. It is a very spiritual area, so I do not take it lightly. While I appreciate the developer's interest in serving the community, I think that cultural access is probably the most important for me. That is why as a leaping point of Manōkalanipō on that cliff, I do not want to see a concrete sidewalk along there. It is just not practical. If any of you have traveled there, you realize that it is a rocky shoreline. I grew up right there in the '70s and traveled it every day. However, we need clarity in how it is we maintain this area if it is going to be the public. We have accessed it for much more than three (3) decades as fishermen and people who come and visit and travel it heavily everyday as a place to recreate. I look forward to a discussion in my committee. Thank you.

Council Chair Rapozo: Anyone else? Councilmember Kaneshiro.

Councilmember Kaneshiro: I am not on the Planning Committee, but one point of clarity is how do you modify or what are people in agreement with as far as grantor's improvements and responsibility. It sounds like the entire discussion that we have that is the only section that people are having problems with. Is the homeowner's association willing to put it in stone that the homeowner's association is going to take responsibility or not? Hopefully, we can come up with some type of language that everybody is comfortable with on their end and I think this whole thing will move forward a lot faster. For me, I am pretty familiar with the place. I used to dive there when I was in high school. But you look at it...we should be working with them to get something that everybody is happy with, because I think the worse-case scenario is that they come in, develop it, and they do not give an easement, then we have to come back with Open Space money and try to establish

an easement and figure out how much money it is going to cost to buy this, what is our maintenance costs. As far as what kind of condition we want to trail to be in, I am comfortable with leaving it the way it is. That is the trail that everybody uses now and that is what everybody has been using in the past. We have not heard any complaints. What is the sense in creating a nicer improvement that people will only walk on the nice improvement in front of that area, and then they end up on a raged trail again? For me, it is all about what is reasonable, what keeps the place nice, and what is visually appealing. It is a great thing that we have this easement in front of us. We have the parking area. It preserves the right for people to park and walk and use the whole beach area or diving area in perpetuity. I am pretty comfortable with that now, but I know there could be some work on that one section. I look forward to it coming back to the committee.

Council Chair Rapozo:

Anyone else? Councilmember Kagawa.

Councilmember Kagawa: For me, I have been a life-long fishermen and surfer. If I had it my way, I would go back to the '70s and have no development on any of the coastlines and keep Kaua'i, Kaua'i. The reality is...that is why I get a little frustrated at this meeting, but we have had forty (40) to fifty (50) years of poor decisions regarding development on our coastlines and protecting access, and we sit here today and we harp on the Administration and the proposed developer and point the finger at them. We are finally going to put our foot down now after forty (40) years of bad decisions? Councilmember Yukimura has made policy for thirty (30) plus years. You cannot point the finger at everybody else when you have been the one making decisions for over thirty (30) years. Now you are going to say, "Come on, what is going on? Where is the better access? What about the public? What about the fishermen?" If we felt that way, we should have stopped way long before because it is too late. I am not happy with the Grand Hyatt Kaua'i/Po'ipū Bay Golf Course being there and the access that is so difficult to access fishing grounds there. How are you going to access that with the golf course there? We are going to worry only about this little parcel and all the rest of the access all along the whole coast, all the way down to Kukui'ula? It is terrible that the fishing access is not what it was and the beach access is not what it was. For me, this was déjà vu. We are going back to the Falko proposal where we had what I think was a pretty decent offer by Falko, and instead we have nothing. He sold it to Zuckerberg. He got frustrated with this body. Now, we are grumbling with what Zuckerberg is going to do. I think we just have to be realistic. Let us work out the best possible solution. Yes, it is good that we bring out concerns, but let us make sure that when we point the finger, we make sure that we know we were at fault as well, this body, and the previous decision-makers, because that whole coastline of Po'ipū-Kōloa, to me, is a series of bad decisions. I do not know...where do you point the finger? Are we going to point it at Mike and at CIRI? No. I think we have to be realistic when we start blaming or when we start harping on people. Let us be realistic and work out the best solution we can. Let us not have only one (1) access that is perfectly maintained, and then the rest of them are just gone and we cannot do anything

about it. Let us make it match and work out a good possible solution. Let us not stop and give certain individuals a hard time and we end up with the same thing that happened with the Falko property where Zuckerberg buys it and now we do not know whether we are even going to have access. Thank you, Chair.

Council Chair Rapozo:

Anyone else? Councilmember Yukimura.

Councilmember Yukimura: Councilmember Kagawa is correct. I have been part of making decisions for thirty (30) or forty (40) years. I want to say that many of them have been 6:1 decisions, 5:2 decisions, and 4:3 decisions. I have not been in the majority in making the wrong decisions. I have been saying for forty (40) years what I have said today. It may be too late to reverse the decisions that have been made in the past, but it is not too late with respect to this development. I think we can find a win-win. I do not believe that the developer can really develop a good development that they want to develop without giving public access, since that is a condition of the law and a priority with the SMA Permits. I do not believe that they should put in a sidewalk, but a non-improved trail can be of different kinds of ways and Mr. Price suggested that there be some landscaping to keep the trail in place. Those who really know trail development and maintenance would help us to determine what kind of level of trail would be good to accept that would be then our responsibility to maintain or their responsibility to maintain. These are issues that can be negotiated if we think about them and think about what will protect the public into the future, both in terms of access to spiritual and important places of the heart, if you will, and also will allow the development to be a very successful development. We have to really discuss and negotiate and be creative and find that best possible decision. It takes a lot of work and does not happen when we do not look carefully at the wording and do not think carefully about what we need to protect and provide for the public.

Council Chair Rapozo:

Councilmember Kaneshiro.

Councilmember Kaneshiro: I just wanted to add that I know there was a lot of talk about liability and the counterintuitive notion of liability is real. I experienced it at Grove Farm with Kīpū Falls. The more you do, the more liable you are, which seems silly, but it is absolutely true. When people were getting hurt and dying at Kīpū Falls, we were like, "We need to do something," but if you put up a little sign, that is not enough because you are acknowledging that people are getting hurt there and a sign will not stop people from doing it, from trespassing. I know it sounds counterintuitive, but it is a real thing. People are faced with that every day. What do we do? How many improvements do we do and what is our risk of liability? That is going to have to be a real consideration we take also. The more we do, the more liable we are and that is just the way things are right now.

Council Chair Rapozo: Anyone else? If not, I, too, am not asking for a paved path. I am not asking for them to go and create an improved easement, but

I am looking for something that is safe for the general public. We have an opportunity today and I understand Councilmember Kagawa's frustration. I have been here for a long time, too, and we do not get this opportunity often. The Council does not get this opportunity often. When we do have an opportunity, I think we have to think about it. Liability is real. It comes up every time somebody wants to turn over a road in limbo to the County. If somebody wants to turn over a little portion of their property to the County, "No, we cannot take that. It is a liability. That road is not up to County's standards, so no, we cannot take that road." Today, it is a path that may not even be accessible to everyone, and have not been there for three (3) years, and "a sight unseen, we want you folks to accept it." I am not going to accept it; not without even knowing what that is, and to expect this Council to approve this easement in one hearing in a few hours, I think, is unreasonable. I am not pointing that to anyone. I am just saying that the term "tension point" was brought up. I do not care if this takes one (1) month. It is not our problem. This comes up to us...this is not something just like that, "Cool, we want the access. Sign the papers," without even understanding what this is. Today, I am going to be honest with you folks that between our County Attorney and Planning Department, I felt like they were advocates for the developer. That is how I felt. That is not our job here. Our job is to be advocates for the people. I want to hear what options we have legally next week. I do not want to hear why we cannot or why we should not. I want to know what we have to provide the best access for our people. That is all. That is not much to ask. I understand Councilmember Chock and Councilmember Kaneshiro's concerns. I, too, would like to see a path that is somewhat natural, but if it is loose rocks and sharp edges, we cannot open that up under the County's exposure. No. I am not going to do that. I do not even think that place is accessible by emergency vehicles. Once it becomes the County's, there is a difference. It is not private path or not a private property or a hotel that is, by the goodness of their heart, allowing people to go through their property. We are accepting this as ours. We are accepting the liability. I think we better be real careful about that. At the end of the day, the developer is required to put in public access. It is not something that...I heard "they want that," but whether they want it or not, it is required. I would also agree that we should be in communication with the developer to figure out what is best for the public and what is best for them. No one wants an improved...nobody wants increased traffic and visitor guests/tourists and all of a sudden you start seeing bicycle tours down there. That is what will happen...that is what happened with the bike path, although it is very clear that no commercial activity is supposed to be on that path. Holy moly. It is crazy. I do not want that either, but I also want to make sure that when "aunty" or "uncle" visiting from Honolulu wants to go walk down there to fish and they have a bum leg or they are old then they can because it is a County easement. I want to make sure that is available. I like the wild and wooly access; I think that is great, but there are some areas for that. We just have to make sure that we are not opening up this County and the taxpayers to more exposure. The other thing I shared with Councilmember Yukimura is that there is no accountability and no enforceability of this. In fact, we are agreeing that an entity that does not exist today—this homeowner's association,

it is not in existence today—but we are approving a document that says that this nonexistent entity will be responsible for the upkeep. Somebody has to take that responsibility today and that responsibility can be transferred to the homeowner's association later. But at this point, what does the County have to go back on? If you go back to this agreement, what does it say? It says that the landowner does not have the obligation, so those are the concerns for Mauna Kea and Mike for next week's committee meeting. Like Councilmember Kagawa, I do not want to lose this opportunity for access, but I also do not want to jump on something that is going to impact this County and the taxpayers going forward. Councilmember Yukimura.

Councilmember Yukimura: I just want to say, too, that the Council has the final say in approving an easement document, but it is really not our job to negotiate and create the language and details and I really want to ask the Office of the County Attorney and the Planning Department in the future on easements to really hammer it out carefully. I think it is to the advantage of the developer, too, because then when it comes here, it can pass quickly. It really is in the creating of the document that these things have to be thought about and I hope we are going to get better and better at this because we want to see a lot more public access that is very clearly defined, protected, and maintained.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: I just have one final comment. For me, Ka'āina works for Mike, he is the Deputy, local boy from Kōloa, and he is...well, he is married to a Kōloa girl, but anyway, for me, he has people in there that is in there for the community. What if this is the best option that can be worked out? Are we going to say, "Sorry, we were wrong?" We make it seem on these mics that we are the experts in everything like we could work out a better deal. What if this is the best deal? Was all of that worth it to make people feel like they are not doing their jobs? At some point, we have to trust the professionals that are there, too. We cannot be "Jack of all trades, master of none."

Council Chair Rapozo:

Councilmember Kawakami.

Councilmember Kawakami: I agree with everything that has been said at this table and I would just like to say that I do not think we are disputing the professionalism or the process. It definitely went through a process with the Open Space Commission and the Planning Department and I think once it reaches the Council, it is part of our due diligence to add to that process. Whenever we can get more public input, I think we get a better product because I think for our own personal edification I have to assume that this current path is being primarily used by fishermen or locals. So we want to make sure that the path that we provide is first and foremost something that they would like to see because these are the folks that are using it. I think in the letter from the applicant itself, they give us quite a bit of time because this is just part of their final subdivision approval, so they have

even admitted that their target is mid-2017, so that still allows us some time. I think they assumed that we were going to be diligent, but I agree with the sentiments that this may be the very best option. So I think we are just trying to verify that. Thank you, Chair.

Council Chair Rapozo: Thank you. I will use my final time to answer Councilmember's Kagawa question. If this is the best that we can get, then obviously it will get my support. If it is not, then it will not. That is the plain and simple answer to your question.

The meeting was called back to order, and proceeded as follows:

Councilmember Chock moved to refer C 2017-50 to the March 15, 2017 Planning Committee Meeting, seconded by Councilmember Yukimura, and unanimously carried.

Council Chair Rapozo: Thank you. Next item, please.

Ms. Fountain-Tanigawa: The next item is C 2017-65.

C 2017-65 Communication (02/17/2017) from the Acting County Engineer, recommending Council approval of two (2) Grants of Easement, made by and between the County of Kaua'i and Aqua Puhi, LLC, conveying easements to Aqua Puhi, LLC: Easements A2 and A3, for access to existing utility and sewer facilities.

- Grant of Easement (TMK No. (4) 3-3-012:040)
- Grant of Easement (TMK No. (4) 3-3-003:043)

Councilmember Kagawa moved to approve C 2017-65, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion or public testimony?
Councilmember Kagawa.

Councilmember Kagawa: I just wanted the Department of Public Works to come up and explain this for the public.

Council Chair Rapozo: Thank you. With that, the rules are suspended.

There being no objections, the rules were suspended.

Councilmember Kagawa: Why do we need this approved and what is the benefit to the public? Do you have a presentation?

Council Chair Rapozo: Improved or unimproved.

LYLE TABATA, Acting County Engineer: Good morning Chair and Members of the Council. Lyle Tabata, Acting County Engineer. This utility was previously known as "Puhi Sewer and Water" and was sold to Aqua Engineers, as Aqua Puhi, LLC. It is an existing sewer utility in the ground at various locations, primarily in the Puhi area, down Puhi Road, crossing over to Nuhou Street and Kaneka Street to get the sewage treatment plant, which sits in the valley behind the Puakea Golf Course. This is basically creating an easement that will legally identify this utility, which is in the ground of County properties.

Council Chair Rapozo: Did that answer your question, Councilmember Kagawa?

Councilmember Kagawa: Yes.

Council Chair Rapozo: Any other questions? Councilmember Yukimura.

Councilmember Yukimura: I am sorry. I am not clear what was just said. This is an actual physical site located in Puhi?

Mr. Tabata: I will let Michael Moule explain the details.

Councilmember Yukimura: Okay.

MICHAEL MOULE, Chief of Engineering: For the record, Michael Moule, Chief of Engineering. These are easements that are for existing sewer lines that are in two (2) different locations: one is on Puhi Road, roughly between Kaneka Street and Haleukana Street, which is the second entrance to the Puhi Industrial site. The second is over a County-owned parcel that currently contains the Young Men's Christian Association (YMCA) and is also where the Kaua'i Philippine Cultural Center is being built. These are sewer lines that have been in for years and have been maintained and operated by Puhi Sewer, which was owned by Grove Farm and they sold that whole system to Aqua Puhi, LLC. As part of the sale, Aqua Engineers said, "We need to have these easements obtained." These easements were never obtained in the past. Elsewhere, where the sewer travels through County property, which it does in many places—I do not know all of those of course, but there are many of them—there are easements, as I understand it, and these were areas where there were not easements, so Aqua said, "We need these easements. Grove Farm, help us get these easements as part of the condition of sale." We have worked with Grove Farm and Aqua Puhi, LLC, to develop the easement documents and this is the final step to get approval from the Council.

Councilmember Yukimura: Okay. So it is basically sort of cleaning up the loose ends before the transfer?

Mr. Moule: The sale has already taken place.

Councilmember Yukimura: Okay.

Mr. Moule: The condition of the sale was that they must do this within a certain period of time. I do not know the details of that.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Any other questions? Seeing none, thank you. Anyone wishing to testify on this?

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2017-65 was then put, and unanimously carried.

Council Chair Rapozo: At this point, let us take the three (3) Commission Resolutions, take our caption break, and then come back and go to the Līhu'e Post Office Resolution.

RESOLUTIONS:

Resolution No. 2017-19 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF REVIEW (*Craig A. De Costa*): Councilmember Chock moved for adoption of Resolution No. 2017-19, seconded by Councilmember Kagawa.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Resolution No. 2017-19 was then put, and carried by the following vote:

| | | |
|-----------------------|---|------------|
| FOR ADOPTION: | Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo | TOTAL – 7, |
| AGAINST ADOPTION: | None | TOTAL – 0, |
| EXCUSED & NOT VOTING: | None | TOTAL – 0, |
| RECUSED & NOT VOTING: | None | TOTAL – 0. |

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

Resolution No. 2017-20 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE PLANNING COMMISSION (*Wade L. Lord – Business*): Councilmember Chock moved for adoption of Resolution No. 2017-20, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Resolution No. 2017-20 was then put, and carried by the following vote:

| | | |
|-----------------------|---|------------|
| FOR ADOPTION: | Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo | TOTAL – 7, |
| AGAINST ADOPTION: | None | TOTAL – 0, |
| EXCUSED & NOT VOTING: | None | TOTAL – 0, |
| RECUSED & NOT VOTING: | None | TOTAL – 0. |

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

Resolution No. 2017-21 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF ETHICS (*Susan H. Burriss*): Councilmember Yukimura moved for adoption of Resolution No. 2017-21, seconded by Councilmember Brun.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Resolution No. 2017-21 was then put, and carried by the following vote:

| | | |
|-----------------------|---|------------|
| FOR ADOPTION: | Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo | TOTAL – 7, |
| AGAINST ADOPTION: | None | TOTAL – 0, |
| EXCUSED & NOT VOTING: | None | TOTAL – 0, |
| RECUSED & NOT VOTING: | None | TOTAL – 0. |

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: With that, we will take a ten-minute caption break and be back at 10:35 a.m.

There being no objections, the meeting recessed at 10:24 a.m.

The meeting reconvened at 10:40 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. Can we have the next item, please?

Resolution No. 2017-22 – RESOLUTION URGING THE UNITED STATES POSTAL SERVICE TO CONTINUE POSTAL SERVICES AT THE LĪHUʻE POST OFFICE LOCATED ON RICE STREET, LĪHUʻE, KAUAʻI: Councilmember Yukimura moved for adoption of Resolution No. 2017-22, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion before we get to public testimony?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Go ahead.

Councilmember Yukimura: Thank you. I just want to say that retail postal services are essential service, especially in the town core, and taking it away from Līhuʻe is like tearing the heart out of Līhuʻe. It would be a huge setback to our efforts to revitalize Līhuʻe town and the federal government is investing thirteen million dollars (\$13,000,000) plus, so I hope they take heed of their moneys and how to work together to really maximize the positive impacts the Transportation Investment Generating Economic Recovery (TIGER) grant could have. As the Planning Director pointed out at the public meeting on the post office, it is a step backwards to go to the airport site because the only way to get to that site would be

to get in a car and drive. I do not know if the postal service has thought about the traffic congestion on Kapule Highway. It already does back up during peak hours. If everybody has to get into a car to go to the post office, that is going to be possibly a lot of traffic congestion and a great inconvenience to all the people who live around the Līhu'e town core that right now can just walk there. For the traffic congestion and parking problems around the present center on Rice Street, the Managing Director at the public hearing on the post office said that he has been talking to and working with the two (2) banks and the Līhu'e Plantation building owners to look at how we can provide more parking and really address the parking problem there. It is going to take a lot of creativity and cooperation. As my dad just pointed out to me, when he goes to First Hawaiian Bank, he can also go to the post office. People can then go to the County services. Having the cluster of services together is a synergistic impact on all of the business in the area and the post office. I feel that the post office needs to think about its own future in terms of boosting its retail services and partnership with the community. I see that they can do that best on Rice Street.

Council Chair Rapozo: Any other discussion before we take public testimony? With that, I will suspend the rules. Anyone registered to speak?

There being no objections, the rules were suspended to take testimony.

MATTHEW BERNABE: Matt Bernabe, for the record. I will try not to yell into the mic...well, I mean not talk too loud. I support the Council's decision on this Resolution, urging them to keep the post office where it is. I do not live in Līhu'e; I live in Kapa'a. But because my wife works in Līhu'e and so much business is done in Līhu'e, I actually utilize the Rice Street Post Office more than I utilize the Kapa'a Big Save Post Office. It is not a lack of driving backwards because I have a lot of school activities and my daughter trains in Kapahi, so I do backtrack towards and through Kapa'a. I am from Kapahi and my mom lives in Kapahi still. I visit her frequently, along with all of my aunties. It is not like I do not go through Kapa'a town ten (10) times a day. When I am going through Kapa'a town, I have not just cut a check, I have not just come to the Council and needing to do some banking after, or gone to Home Depot and bought something, and then I remember that I have that letter to send out. There is a lot of business that is done in Līhu'e, even if it is shopping. The other point that I would like to say is I like that building, it is comfortable. You can talk about the traffic and the inconvenience. I agree with everything that Councilmember Yukimura just said. I personally am comfortable with it. Right now, global environment, our national environment—it is pretty uncomfortable. If you do not agree with me, then I do not know where you are. Right now, I really do not want to see this post office change. If the federal government is listening, use the money better spent somewhere else, like our Kapa'a traffic problem or something. How does that sound? Thank you.

Council Chair Rapozo: Anyone else? Mr. Hart.

BRUCE HART: For the record, Bruce Hart. The post office is historic. As Mr. Bernabe said, it has a certain ambience. I also agree with Councilmember Yukimura. The one area on Kaua'i which you really can function, so to speak, business-wise and personal-wise, is right here in this core. You can walk and you can park in one place. Since we are blessed with such good weather, most of the time you can walk to every type of activity like the State building, the banks, the post office, and even personal business can be taken care of, like going to the County's buildings and all of it. I do that. I walk; I do not go get in my car and move half a block and park again. It does not make sense. I would like to see it, but I also am concerned. I would suggest if there is really thirteen million dollars (\$13,000,000) then why does the government not give it to us to improve traffic, and just that one area? In other words, they could make it specific, just that one area. We could do creative things to improve the congestion. Also, it would not bother me if they built another post office. Thank you.

Council Chair Rapozo:

Next speaker.

CHAD DEAL: Good morning Council Chair and fellow Councilmembers. My name is Chad Deal, Government Affairs Director for the Kaua'i Board of Realtors, here to testify in favor of Resolution No. 2017-22, keeping the Lihu'e Post Office on Rice Street. The Lihu'e Post Office is a historical landmark for our County. Since the Kaua'i Board of Realtors has taken an integral step in supporting the revitalization effort on Rice Street, we feel that it is extremely important to keep the Lihu'e Post Office as a vital part of the revitalization effort. I would like to ask you to please support this Resolution. Thank you very much for the opportunity to testify. Thank you, Councilmember Yukimura, for putting forth this Resolution. I appreciate it. Thank you.

Council Chair Rapozo: Thank you. Anyone else? If not, I will call the meeting back to order. Further discussion? Councilmember Kagawa.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you, Chair. For me, as a whole, I try to refrain from introducing resolutions when it entails telling the Federal government or State government what I feel they should do from an elected county official standpoint. I think the people have the power. I think individual messaging to the officials from the local residents is the most powerful means, I believe, in communicating concerns such as these. The reason why I feel that way is that sometimes there is a larger picture that we may not see of ramifications of telling the Federal government to do a certain thing. In this case, I do not know what the ramifications are if we urge them to keep Lihu'e Post Office open, which I regularly use, and it is best for me, but I must vote here as a representative of the entire

island. If we keep Līhu'e open, then what are the ramifications? Are the ramifications possibly closing other post offices, like the Waimea Post Office or Hanalei Post Office? I do not know what the ramifications are; therefore, I am hesitant to support it as an elected official. At that point, I will regret my decision if it had any influence. I believe that the people have the power. We elect our congressional leaders and the people need to communicate their concerns. If the will of Kaua'i's people is to urge keeping the Līhu'e location open, with the risk of possibly affecting other post offices on Kaua'i and that is the will of the people, then fine. For me, I do not know because I do not sit in that office. I did not run for Federal office. I ran for County office. My focus is on County issues and that is where I will place my attention. If I wanted to make sure that Federal things are kept in place, I would have ran for Federal office or I would have applied for a job as a staffer for one of the congressional leaders of Hawai'i, but I have not. I am going to worry about County business. We have enough problems here. As far as the Rice Street TIGER grant, I have made it no secret that I believe that project will turn out to be one of the worst decisions ever in the history of Kaua'i. I believe that turning a highly used road from four (4) lanes into three (3) lanes that is already congested will be a complete utter disaster. I believe it is functional the way it is now. I believe that all sectors of government are broke and we are really spending moneys in an area that is already functioning fine. I will not be supporting this Resolution. Thank you, Chair.

Council Chair Rapozo: Anyone else? Councilmember Kaneshiro.

Councilmember Kaneshiro: I have a question for the introducer.

Council Chair Rapozo: Go ahead.

Councilmember Kaneshiro: What is the status of this whole thing right now? Are they still going open up more public meetings? Have they made a concrete decision? What is the status?

Councilmember Yukimura: There was a meeting in late February...I think it was the 23rd, and there are thirty (30) days for public input, which is why it is important, I feel, for the Council to express its position as elected representatives of the County. At some point after that, I am not sure when, I presume taking into account all of the input, they will be making a decision.

Councilmember Kaneshiro: So it is still in process?

Councilmember Yukimura: Correct. In fact, this is in the hearing period. This is the open record period right now for input. They have solicited input, if you will.

Council Chair Rapozo: Any other questions? I apologize. I did not attend the meeting and I tried to do as much research as I could, but what is the Post Office's plan for the building? Are they going to sell it? Is that what their plan is?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Just sell it out?

Councilmember Yukimura: Right. They are planning to expand and improve the airport site, assuming they decide to consolidate, and then to auction off the building.

Council Chair Rapozo: Is that what they said, that they were going to auction it off?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay. Councilmember Brun.

Councilmember Brun: The building is owned by the Post Office?

Councilmember Yukimura: Yes, it has been owned for almost one hundred (100) years...for a long time. I really hope that we can speak with a loud voice about this because it will be hard to imagine what it will do to Rice Street. As can you can see with the move of Kaua'i Toyota and American Savings Bank, Rice Street needs the revitalization. This is the County seat where business, government, and jobs occur. So the well-functioning of this core area as it radiates out is very, very important. The TIGER grant is an effort to really bring back businesses to Līhu'e. It is an opportunity for redevelopment and revitalization. The postal services, I believe, are an essential part of that.

Council Chair Rapozo: Any other discussion? Councilmember Brun.

Councilmember Brun: I am kind of struggling with this one. I was not here, I was on was on O'ahu during this meeting, so I did not see who went there and whether the testimony was in support or against. As a business owner, I can understand the move. If you are not making money, you need to do something to consolidate your business. What I am worried about is if we put this loud voice, like Councilmember Kagawa said, and we have an influence and now we shut someplace else down or the price of sending out mail in mailboxes go up because we force them to stay open or we had a loud voice and they staying open. For me, I want to see what the community has to say. We had only one (1) written testimony that was in support of the move and this person was from Kekaha. I did not really see anything supporting it, except the people who came to testify today. I do not

know if we can push this off for another week so we can do more research. How long do we have? Do we need to do this? This is a government job. Do we even have a say in this? I am not ready to really vote on this, either way today.

Councilmember Yukimura: May I address some of the points that were raised?

Council Chair Rapozo: Was there a question?

Councilmember Yukimura: It is not about a question.

Council Chair Rapozo: You can address it in your discussion.
Councilmember Kaneshiro.

Councilmember Kaneshiro: I have been under the same impression, just because I do not really have a temperature on what people want. I have heard some people that they want the post office there and I have heard some people say that they want the post office moved. From my standpoint, I am like...I do not know...I do not use the post office, so who am I to say where it should be? I know the word "opportunity" comes up. From my standpoint, for one, I do not really like telling people what they can and cannot do. For example, if First Hawaiian Bank wants to move out, which brings a lot of people there, I do not think I would be comfortable doing a resolution to say, "No, First Hawaiian Bank, you cannot move because you are along Rice Street and part of the TIGER grant and you bring people here." I am not comfortable with that. It may be the Federal government building, but I am still not that comfortable saying "you can or cannot do this." The word "opportunity" comes up. So for me, it is really hard to make a decision and take a strong stance on it because we may be killing an opportunity. If they do move, it might be an opportunity for someone to say, "Yes, they are putting in these improvements with the TIGER grant and it is an opportunity for me to do a business here in this building." For me, I just do not have a good temperature on it, so I am not comfortable voting on it right now. We also had a lack of public input, as far as E-mailing us what they wanted. It is really split. For me, I am uncomfortable supporting this at this time.

Councilmember Yukimura: Chair?

Council Chair Rapozo: Yes?

Councilmember Yukimura: I just want to be able to answer some of these issues because most of you were at the National Association of Counties (NACo) Legislative Conference when the hearing happened. The Chamber, Sue Kanoho, the Planning Department, planners, and the Administration showed up. There were a lot of support from Lihue and outside saying that there is a need here. I think people put a lot of their testimony there, so they felt maybe that this did not

need it because there was great coverage, too, by the newspaper. If the group wants to take the time to do your research and talk to people, we can do that. I am looking at the next meeting, which would be at the 22nd. Aida, do you know the deadline for the input. I think it is the 23rd, thirty (30) days. Eddie, do you know that? We could make a decision on the 22nd and still make the deadline if you want to do your research and talk to people out in the community. I feel like there was very strong community support for it, but if you want to verify that yourself, we can defer this matter.

Council Chair Rapozo:

Councilmember Kawakami.

Councilmember Kawakami: Thank you, Chair. I plan on supporting the Resolution and my reasoning is because it seems contradictory that you have two (2) Federal agencies, one that is granting us thirteen million dollars (\$13,000,000) to improve connectivity and multimodal transportation, and you have another Federal agency that is contradicting that by moving an essential service out of the core. I do think that the current post office serves a purpose, a great purpose. I would like to also say that this is a symptom of evolution and the double-edged sword of technology. Nationwide, this is a problem. There is romanticism with post offices because, one, many of them are located in historic buildings. So there is a sense of place and post offices are essential to the character of a neighborhood and to creating a sense of place. But nationally, the post office has been divesting their assets because they are losing money. This is a national trend and evolution of commerce. Nationally, they are saying that shopping malls and shopping centers will soon be a thing of the past because it is easier and cheaper for both businesses and people to order things online. Essentially, this is the same thing. They are losing revenue because people are utilizing E-mails. So I would say that if people are really sincere about saving this post office, that they practice what they preach and start sending out more letters through the post office because this is really the core of the problem. People are not utilizing their services because it is easier and more convenient to send out E-mails, and people have to realize that we can send these resolutions out and tell them, "Please do not shut down our post office and keep the services where they are at," but unless we are sincerely willing to change our behavior and vote with our pocketbook, this would just be kicking the can down the road. I do plan on supporting the Resolution. I know that when we are in our national conference, there may have been some confusion on where the State Representative of the Līhu'e District, Representative Tokioka and maybe Senator Kouchi stood, but they are on the record as far as supporting the current location. In fact, I think they submitted testimony at this public meeting, so I wanted to clear the air that the State Senator and the Representative of this district are in full support of keeping this post office currently where it is at. Thank you, Chair.

Council Chair Rapozo:

Councilmember Brun.

Councilmember Brun: At that meeting, because we hear about parking at the bank, but was Bank of Hawai'i and First Hawaiian Bank there? Are they in support of keeping the post office there? There are six (6) parking stalls, I think, maybe seven (7) for the post office. If there are more people there, they are parking at the bank, which I am pretty sure I saw signs there that it is only for bank use. We are using it freely and if we keep it there, we are going to keep on using it. Did anybody check with First Hawaiian Bank or Bank of Hawai'i if they support this, because we are using their parking lot to walk around town? I do not know if they approve of it.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: The Managing Director said that he has been taking to them. I have not spoken to them personally, but it is to their advantage, there is a synergy that people can go to the bank, and then go to the post office or go to the post office, and then go to the bank. There is an opportunity for sharing parking or expanding parking together or working things out because they share the customer base. Bev Brody reported out on a survey that they did about how many pedestrians there were walking to the post office in one (1) or two (2) hours. I do not remember the exact number, but it was in the hundreds. As it is known, Councilmember Kawakami mentioned that the prognosis for large shopping centers and so forth is a fairly negative one, because where the economic growth is, is on these walkable main streets, where people in towns the per square foot income on those units are much higher than the large shopping centers, and that is because of the pedestrian customers that go by. That is a new thing that is coming up. I also want to say that the post office...it is true that they are being affected by technology, like we all are, and it requires a change and the business itself to change its model. There was some discussion at the hearing about how people would go and use United Parcel Service (UPS) if the post office was not here. The post office, too, has to think about how it becomes more customer-friendly. I am not sure that being a drive-thru service or drive-to service is going to be in the long-run the best for the post office as well. I am hoping that they are thinking in an entrepreneurial way, and if they do, walkable communities are where it is at in the future.

Council Chair Rapozo: Is the plan to just have that a drive-thru? What I understood, what I was told is that they were going convert the airport to full service post office.

Councilmember Yukimura: Right, but as Mike Dahilig pointed out in his testimony, the only way you can get there is really to drive to it. So you are just having everybody drive and it is a single-purpose, right? You are not going to walk to any other place to do other business; you are just going to go there. If we have a society where everybody just drives from place-to-place, that is a formula for total gridlock in the long-run.

Council Chair Rapozo: Anything else? Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, there are pros and cons on both sides of it. I think as far as the Resolution goes, my discomfort is taking a hard stance on me. If we just encourage the process a little more and let the public speak out on what they wanted, we might get a better idea of where things go. So that is the only reason for me...

Councilmember Yukimura: The public...

Council Chair Rapozo: Hang on, Councilmember Yukimura. He is finishing.

Councilmember Kaneshiro: That is the only reason for the way I am voting on it. You have to let it go through the process. That is just my opinion. If the Resolution was to ask for more time for public input and plans on what the post office will do, I would be fine with that, supporting a resolution like that. It is kind of difficult to take a hardline stance on it with just the amount of information that we have and where we are in the process.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Can we defer this then? I think the public assumed that the Council had heard it speak because it has been speaking loudly. Let us just defer it and allow the public some time to express their opinions.

Council Chair Rapozo: That is going to be up to the body. I expected more people here today. I thought we would have more people here today. I think we have received one (1) written testimony at the Council. I read some of the comments in *The Garden Island* newspaper on their website, which was not very supportive. There have been some very practical explanations of why it should move, for safety for vehicles and pedestrians. It is a very dangerous place over there, very dangerous. I was not here for the meeting also. I was in Washington, D.C., and in fact, as Councilmember Kawakami talked about, we brought it up with our delegation in congress and they were not really up to speed on it and they made some comments that were erroneous regarding the support of our state delegation. I have followed up with E-mails to their offices and not received any information one way or the other. When the TIGER grant came through the last time, I was the only one who voted against it, and I said that people are leaving Rice Street. The TIGER grant, which I am very surprised that, as competitive as that grant is, the Federal government granted that money. That is not going to bring people...Kaua'i Toyota knew about the TIGER grant and American Savings knew about the TIGER grant. They knew that there were planned improvements for Rice Street and that was not enough to keep them here—

they moved. Sherman Shiraishi, a great attorney that was on Kress Street in Līhu'e, he is now gone and down at Kukui Grove now. I think at some point we have to be realistic and say...it is unfortunate the way Kaua'i was designed where you have the courthouse and the police station all the way down by the airport, and then you have the County and State buildings here. The United States Postal Service is a business and they have to survive. They are doing what I wish this County would do, which is consolidating, having no duplication of services. We have to survive or we are going away or raise the costs of stamps and services. That building, number one, has to stay in that form because it is a historical building. What Councilmember Kaneshiro said a few minutes ago struck me that, that would provide an opportunity for the museum to expand or provide another opportunity like a postal service museum or a Kaua'i Museum expansion. There are a lot of things that could open up with the departure of the post office. Yet, the character of Līhu'e would remain the same. The building would still be there. Hanamā'ulu and Puhi Post Offices disappeared. They are going away because they have to because all they have is the services, the charge for the services that they provide. The County can continue to blow them up because we will just raise taxes and raise fees. But the post office is limited and it is already tough. They are struggling and they are trying to consolidate their services and their buildings. They are trying to pump more life into this agency so that they can stay afloat. This is a really nice thing. I think the emotional side of me says, "I want that to be the post office." I am opposite of Matt. I go to the Kapa'a Post Office because of the availability of parking. If you wait in line over there, it is nice and air conditioned and the facilities are much more conducive to doing business in a post office than this little one, which you have to fight for parking. Bank of Hawai'i has to hire a security guard out there to tell people to not park in that stall. I do not see too many cooperation between the bank and the post office, because that bank parking lot gets full. I do not see them saying, "Okay, we will give up five (5) spots for the post office." We have had problems with the post office for years involving the road and unevenness and people getting hurt. We have paid off claims from people getting hurt over there. The post office says, "Hey, we own this part of it and you folks own the road." They did their share and we never did. That whole place is not safe. I can tell you that the post office is not going to put another dime in that place to make it safer for the public. We have been on them for many, many years and they have done what they are going to do and they are not doing anymore. It is a tough position to be in because yes, it seems right and nice thing to do to say, "yes, yes, yes," but when you look at it with the bigger picture and you start looking at why they doing it and should we get in the way of them trying to make their operations efficient—I think there is life on Rice Street with them gone, just because the building will remain. I think that more people would be able to utilize that facility. To me, I think the museum would be foolish not to go secure that and create an annex using that facility. But that is just one of the thoughts. There are many others, like a coffee shop. I think it opens up a lot of opportunity for entrepreneurs. Again, I am a businessman. I am not a "Kawakami businessman" and I do not have chains of stores, but I can tell you that I would not open up a business on Rice

Street right now, not with what is going on. Do you know what is going happen when they start construction on Rice Street? What do you think is going to happen at that post office? You do not think that they look at all of that? Do you not think these folks do not think about what is going on? That is going to be an area that nobody wants to go when that construction starts. Rice Street is going to be a mess during the duration of that construction and the post office will definitely suffer. They still have to pay salaries and benefits. They do not operate for free. I see their part and I wish I had more information from the federal government, which I am trying to secure. I just do not have it today. Councilmember Yukimura.

Councilmember Yukimura: So the issue of the museum possibility did come up at the hearing and there was also talk about how impossible it would be at the market price that it would go for, for a museum to take it over. I think you really need to hear from the community because they did turn out to speak. I feel like we are thinking more of the post office than we are thinking of Līhu'e town and its economy and the County seat. The County seat needs the services that we need and want to encourage on Rice Street. There is lead time. These plans of Toyota and others were done way before, I think, the TIGER grant came up. The TIGER grant is what hopefully will bring businesses back and we do see signs through the brewery and the café that there is potential for this. Līhu'e town, just as a through-street, is not encouraging of businesses and the TIGER grant would actually make it more encouraging of walking. For elderly to cross four (4) lanes is a very difficult thing to do. When they can have a median strip to stand on in the middle of the street, it is a major change for walkability. The roundabout is a huge improvement that works every day for traffic flow in Līhu'e and that is what is coming with the TIGER grant. It is going to take a while for the businesses to come back, but we have to have a certain amount of faith and confidence and a plan for it. It is not going to happen overnight. If a Federal governmental agency, which is a very essential service, leaves then it has huge impacts. We need to think not representing the postal service, but think representing the town and the people of Kaua'i. At minimum, I would like to ask if at least we could give people a chance to speak by deferring this. People have not spoken here because I think they felt that they have spoken up and sent letters to the post office and I think they assumed that the Council would be in favor of this. So at least give them a chance to speak.

Council Chair Rapozo:

Councilmember Kawakami.

Councilmember Kawakami: I am surprised that they would assume anything, because it is important to get the public discussion when resolutions are on the table. It is a one-shot deal. It does not go through a public hearing, so this is their opportunity to speak up. I am a little disappointed that the advocates are not here today. I would like to say that this is a Federal agency and I would like to be on the record that if any of the post offices on the island were threatened to be closed down, I would support a resolution to save it. There are other ways and places that they can go and look and cut and I will always advocate for our own

backyard, which is across this island. If it was any other post office, I would be supporting a similar resolution. I agree there are things that we should look at right now and I am not sure if this is most efficient way, but this is how it is. Our Kaua'i mail gets mailed out to O'ahu and sorted and mailed back here, and then distributed. That might be the most efficient way, but I am saying let us look at efficiencies amongst the system. They say that government should operate like the business. They should; I totally agree. I think it takes innovation and if there needs to be laws that need to be changed to allow government to operate like a business, then let us go and explore those avenues. You take a look at Borders bookstore, which to me, was just a glorious library. People would go in and order their espressos and lattes and pick up a book off the shelf, read it, drink their coffee, and put it back and go to the movies. Libraries are also at stake. We should have a Java Kai or a small town coffee in every single one of our libraries. Similarly with our post offices, if we could inject some private sector ways of drawing in revenue, we should be exploring that. On the record as far as what are the unintended consequences with supporting this and its domino effect, I would just like to say that if it is happening on Kaua'i and there is a threat of a close down, I will be supporting it to keep it open, because I do know that these post offices serve neighborhoods. I do know that the beneficiaries are the *kūpuna* because that is how they can walk to the post office. Every time we lose a post office...Hanamā'ulu was on the chopping block, but that post office burned down. Puhi closed, so now Puhi residents are forced to come to Līhu'e or elsewhere. It is unfortunate that we are here at this juncture, but like I said, this is the double-edged sword of technology and it requires government and the private sector to innovate and differentiate or they are going to die. Thank you, Chair.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: I want to say that there was testimony from Rice Camp residents, Kaniko'o at Rice Camp. They would have to get into a car and go to the post office if the post office on Rice Street moves. Now, they can walk. That is the kind of impacts we will have on people who live in Līhu'e.

Council Chair Rapozo:

Councilmember Kawakami.

Councilmember Kawakami: One more point that I left out is the first thing that came to my mind when this matter came to our attention is the potential loss of jobs. I did go to the post office, which I utilize quite frequently. In fact, I do have a Post Office (P.O.) Box there, so there may be a conflict of interest, but let us have the Board of Ethics come back and correct me if I am wrong. The first thing I did do is talk to some of the workers and ask, "Hey, does this proposal create any rifts or loss of jobs," and they did assure me that there is no loss of jobs. So I wanted to reassure that whatever which way they go, it seems to appear that current staffing levels would maintain. Thank you.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: I need to disclose like Councilmember Kawakami that I do have a P.O. Box there in Līhu'e. So if we have a conflict of interest, Board of Ethics, please let us know.

Council Chair Rapozo: Anyone else?

Councilmember Yukimura: Chair, if the discussion is over, I would like to make a motion to defer, but I do not want to stop any discussion.

Council Chair Rapozo: Is there any other discussion?
Councilmember Kagawa.

Councilmember Kagawa: Again, I just want to reiterate that it is not about knowing what the community has to say. Every resident in Līhu'e wants to keep this post office open. Every resident that traverses to Līhu'e regularly wants to keep this post office open. My reason for not wanting to support this Resolution is not about that. It is about whether this County elected body should be telling the Federal government what to do, not knowing what the ramifications are of closing Līhu'e or keeping Līhu'e open. Is something else going to be affected? We do not know that because it is not our job. We had meetings with Senator Hirono and Senator Schatz and they are the ones that are elected by the people of Kaua'i and they have the most influence if they feel the strong vibe from Kaua'i and its people that they want this thing open, no matter what the ramifications are, then I think the constituents need to communicate that to them. Why would the constituents mass E-mail or mass text us, this body, when we do not have any influence? The people in power are unfortunately or fortunately the congressional delegation that the people of Kaua'i vote in. They have the most influence on this issue. It is a federal decision. To me, not knowing the ramifications, I do not think I am willing to risk what the ramifications are of urging the Federal government to keep this post office open, and again, being caught on the backend with something that I did not want to happen in the end. It is just a difference of opinion of whether this body should be getting involved with this decision when we actually do not have any power, very minor power in affecting this decision. I do not know why we would waste so much time deferring and taking minutes on something like this. I believe we should just take the vote. If it has enough votes, then fine. If you are waiting for public testimony, I can tell you one hundred percent (100%) that it will be in favor. I can guarantee that. *Kūpuna*, young, old—I do not care what. It is all going to be in favor. I do not know why we would waste our time getting the vote. It is just whether we, here, believe it is our decision or not. Thank you, Chair.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: It is interesting that Councilmember Kagawa did not think that way when it came to telling the Department of Transportation (DOT) that our constituents are really concerned about the Kapa'a-Wailua traffic, a fellow government agency; or to tell Hawaiian Airlines that their prices were too high. We do not have any governance over them, but we did want to speak for the people of Lihue and Kauai. That is a responsibility. We do have an influence. I think Hawaiian Airlines and the DOT did respond. It is our job if we think that there might be other consequences to find out about those consequences or to speak our position, and then get a response back. That is the kind of dialogue we need to have. This is just a way to speak on behalf of the people of Kauai, which is our responsibility as elected officials.

Councilmember Kagawa: Can I ask her a question?

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: What are the ramifications? Are there no ramifications of keeping both post offices open?

Councilmember Yukimura: What the post office told us at the meeting is the reason that they suggested the move was to address the parking issue. That, as I heard it, was the main reason for the Postmistress suggesting that. There was not going to be any reduction of services, but it was just a move.

Councilmember Kagawa: So nothing else would be affected if they keep it open? Do you know that for a fact?

Councilmember Yukimura: That is what I heard at the opening. You can go and ask the questions yourself, too.

Councilmember Kagawa: It is your Resolution. You should know the answer.

Council Chair Rapozo: Hang on. The notice is clear. It just says that, "The postal service has determined that this operation is in excess and is no longer necessary." That is what they are saying. That was the public notice that was posted that it is an excess building, excess function, and you have duplication there at the airport, and that they can consolidate. That is what the notice is saying. Again, I am trying to get more information from the Federal government, but I have not. I believe they have already made up their mind and they are just going through the motions, but I do not know that for sure. Councilmember Yukimura.

Councilmember Yukimura: Chair, whatever their reason is, I think we have to express how we are going to be impacted. That is our job. We need to tell

them what the impact of their proposed action is going to be. That is what I am hoping this Council will speak. I am open to asking the community to speak once again. I think they feel like they have spoken many times. It is just the Council was not around during those meetings; they were off-island. So it is kind of a responsibility to find out, talk to people, talk to Sue Kanoho, talk to Chamber members, and talk to the *kūpuna* at Rice Camp and see what they are saying.

Council Chair Rapozo: Does Rice Camp not have mail receptacle there, a mailbox where they deliver at like most of those complexes?

Councilmember Yukimura: Maybe, but they go and buy stamps.

Council Chair Rapozo: I understand. I will be honest. I do not know what the numbers are. The few times that I have been at the post office, everybody drives there...I do not see too many people walking there. You will see the folks across the street from the County buildings go across, the people that are working. That is going to cause a problem because now they are going to have to go to the airport, but I do not know how many people actually walk with their boxes up Rice Street to go and send their mail. I do not know how many people actually walk from anywhere else. Even Rice Camp, I would be curious to know what the actual numbers of those seniors that will actually walk all the way up to the post office on a regular basis. I know you said that a survey was done, but I have not seen the results.

Councilmember Yukimura: I am sure that we can ask Bev Brody to provide that in the next two (2) weeks.

Council Chair Rapozo: I do not have a problem with a deferral. I really do not. If you want to defer it, then that is fine.

Councilmember Yukimura: Okay, if everybody is done speaking, I will make that motion.

Council Chair Rapozo: What I am more interested in is finding out what the ramifications are. I think that is a critical question. It is no different than our budget. If we want to choose to preserve one hundred thousand dollars (\$100,000) of funding in this line item, then we have to take it from somewhere else. Is some other post office going to be impacted? I do not know. I do not have much information. Councilmember Yukimura, you infer that because we did not go to the meeting that we did not talk to people. There are people beyond what showed up at the meeting. There are people that I talked to at Foodland and Safeway, so do not infer that because we did not go to the meeting that we do not have information. I can tell you that there are a lot of people out there that did not submit testimony that thinks the move is good and that it should happen because they are disgusted

with the congestion. It is a half-half issue. The fact that I did not show up to the meeting does not mean that I did not talk to people. Councilmember Kagawa.

Councilmember Kagawa: I would just like to explain my reasoning for supporting the Hawaiian Airlines Resolution. In 2016, they posted a net income of two hundred forty-four million dollars (\$244,000,000) and that is why I believe they should be reducing their interisland flights. Thank you, Chair.

Councilmember Yukimura: And we all agreed.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, I just want to make my position clear on this. My "no-vote" on the Resolution does not mean that I do not want to keep the post office there. My "no-vote" is because there is a lot of pros and cons on both sides with strong voices and I think that those are the ones whose voices should be heard. We really do not have any skin in the game. This is not a Council decision to make. For me, I would rather have those people make their arguments and see where it goes than us push something. That is just where I am coming from. A "no-vote" on the Resolution does not mean that I want the post office to definitely move there. I am just saying that I think the people that use that post office should have a voice. I do not use the post office, so it is very difficult for me to say how important it is for me, personally. I think those voices need to be heard and for me to just come out, swinging with a resolution that...and quite frankly, I do not want to spend a lot of time on it either. I think we should handle Council business also. As far as deferring this and trying to get more public opinion, I think the people should have come today. If a resolution is going come up, get the support and get the people out here on the day of the resolution so that we do not need to keep dragging this on. We have the budget coming up and a lot more pressing, important items that we are going to be spending a lot of time on and it is going to be very difficult for us. That is just my stance. A "no-vote" does not mean that I want the post office to move. I am just saying to let the process go and let the people that have the strong opinions make it clear to the right people.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: For myself, I am going to agree with Councilmember Kagawa and Councilmember Kaneshiro. I am just not ready to vote on this right now. I do not see how we have a say in what the Federal government does. It is the same thing if I had two (2) businesses in Līhu'e, I would not want you folks as a Council coming there and write a resolution because I cannot close one of my businesses because it is a business decision. That is the part I am struggling with. Maybe we should just let the Federal process work it out and let the right people go to the Federal government, give them their concerns, and to our delegation in Washington and give them their concerns. Maybe we should not

be doing this as a Council because we have no jurisdiction on whatever happens. I do not really want to vote on this. I do not think I am going to be supporting this.

Councilmember Yukimura moved to defer Resolution No. 2017-22, seconded by Councilmember Kawakami.

Council Chair Rapozo: Roll call.

The motion to defer Resolution No. 2017-22 was then put, and carried by the following vote:

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| FOR DEFERRAL: | Chock, Kawakami, Yukimura, Rapozo | TOTAL – 4, |
| AGAINST DEFERRAL: | Brun, Kagawa, Kaneshiro | TOTAL – 3, |
| EXCUSED & NOT VOTING: | None | TOTAL – 0, |
| RECUSED & NOT VOTING: | None | TOTAL – 0. |

Ms. Fountain-Tanigawa: The vote is 4:3.

Council Chair Rapozo: Okay, Resolution No. 2017-22 is deferred. That concludes the business of the Council Meeting for today. Thank you.

ADJOURNMENT:

There being no further business, the Council Meeting adjourned at 11:35 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk